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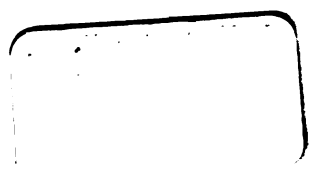
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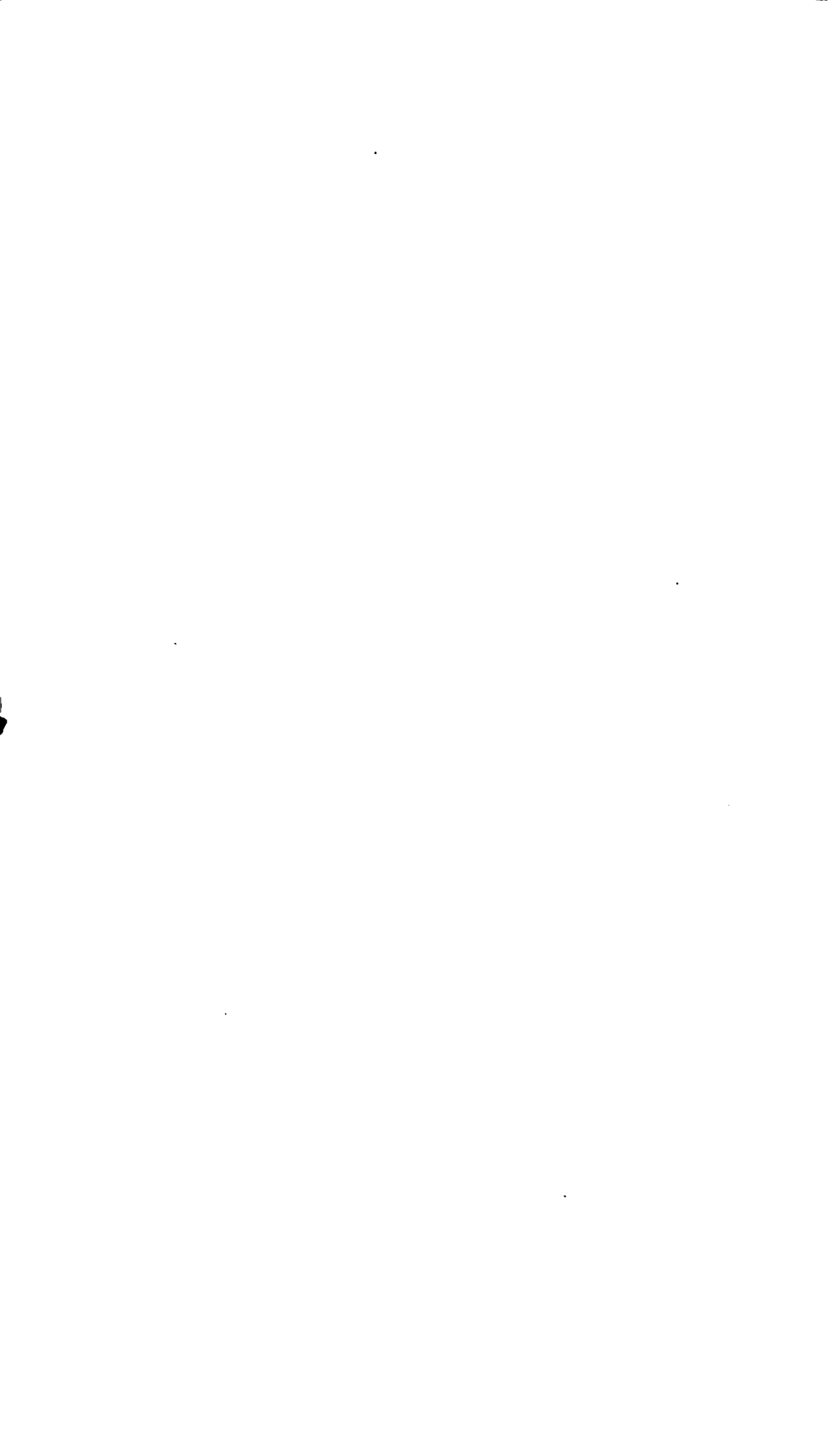
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R E P O R T S
O F

C A S E S

ARGUED and ADJUDGED in the COURTS of
K I N G ' s B E N C H

A N D
C O M M O N P L E A S,

In the REIGNS of

The late King *William*, Queen *Anne*, King *George* the First,
and King *George* the Second.

Taken and collected

By the Right Honourable *ROBERT* Lord *RAYMOND*,
late Lord Chief Justice of the COURT of KING's BENCH.

V O L. III.

CONTAINING THE ENTRIES OF PLEADINGS TO THE CASES
COMPREHENDED IN THE TWO FORMER VOLUMES.

Published by *GEORGE WILSON*, Esq; Serjeant at Law.

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H. WATTS, AND *J. RICE*.

M,DCC,XCII.

OFFICE OF THE
LELAND STANFORD, JR., JANUARY 27
LAW DEPARTMENT.

a. 116 2 41

JUL 15 1901

P L E A D I N G S

T O

C A S E S

IN LORD RAYMOND'S REPORTS.

Pleas before the Lord the King at Westminster of Easter Term in the thirteenth Year of the Reign of William the Third, King of England, &c.

West, Mayor of Banbury, against West. Ld.
Raym. 674.

Middlesex, **B**E it remembered that heretofore, to wit, in the term of the *Holy Trinity* last past before the lord the king at *Westminster* came *Samuel West*, gentleman, mayor of the borough of *Banbury* in the county of *Oxford*, by *James Long* his attorney, and brought here into the court of the said lord the king then there his certain bill against *John West* in the custody of the marshal, &c. in a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *Middlesex*, to wit, *Samuel West*, gentleman, mayor of the borough of *Banbury* in the county of *Oxford*, complains of *John West* in the custody of the marshal of the *Marshalsea* of the lord the king, being before the king himself, for that, to wit, that whereas the borough of *Banbury* in the county of *Oxford* aforesaid is an ancient borough, and in the same borough for many years now last past there hath
Vol. III. B been,

Declaration for
a false return of
a mandamus.

been, and yet continues to be a mayor of the same borough yearly chosen: and whereas all the charters, books, records, muniments and ensigns of magistracy of the said borough of *Banbury*, do belong and appertain, and for divers years now last past have belonged and appertained to the place and office of the mayor of the said borough: and also whereas the said *Samuel West* lately before the feast of Saint *Michael* the archangel, to wit, on *Monday* the fourth day of *September* (being the first *Monday* in the month of *September*) in the eleventh year of the reign of the lord *William* the third, now king of *England*, &c. at *Banbury* aforesaid in the county of *Oxford* aforesaid was duly elected, and on the same feast of Saint *Michael* the archangel was duly sworn and admitted into the place and office of mayor of the borough of *Banbury* aforesaid to be continued in that office from the same feast of Saint *Michael* the archangel for one whole year from thence next following; and by reason thereof, the charters, books, records, muniments and ensigns of magistracy of the borough aforesaid belong and appertain to the said *Samuel West*, and ought to be, and remain in his custody during the whole time of his mayoralty there: and whereas on the thirtieth day of *September* in the eleventh year aforesaid, and continually afterwards hitherto, all the charters, books, records, muniments and ensigns of magistracy of the borough of *Banbury* aforesaid, which belong and appertain to the place and office of mayor of the same borough, were and yet are in the custody and possession of the said *John West* at *Banbury* aforesaid in the county of *Oxford* aforesaid, and the said *Samuel West* on the said thirtieth day of *September* in the eleventh year aforesaid there requested the said *John West* to deliver the said charters, books, records, muniments and ensigns of magistracy of the borough of *Banbury* aforesaid to the said *Samuel West*: nevertheless the said *John West* then and there and often afterwards unduly, unrighteously and unjustly and injuriously refused to deliver those charters, books, records, muniments and ensigns of magistracy to the said *Samuel West*, to the no small damage and grievance of him the said *Samuel West*: and thereupon the said *Samuel West* for the more speedy obtaining the said charters, books, records, muniments, and ensigns of magistracy of the borough of *Banbury* aforesaid afterwards, to wit, on the seventeenth day of *April* in the term of *Easter* in the twelfth year of the reign of the lord the now king, obtained and prosecuted from the court of the said lord the king before the king himself (the same court being then at *Westminster* in the county of *Middlesex*)

The writ of
mandamus

a certain writ of the said lord the king of *pluries mandamus* directed to the aforesaid *John West*, by which said writ reciting, that whereas there were then lately delivered into, and then remained in the custody of the said *John West* divers charters, books, records, muniments and ensigns of magistracy belonging and appertaining to the borough of *Banbury* aforesaid in the said county of *Oxford*, which ought to be delivered to the said *Samuel West* for the use and benefit of the same borough; and the said *Samuel*, then mayor of the borough aforesaid, often demanded of the said *John West* the aforesaid charters, books, records, muniments and ensigns of magistracy belonging and appertaining to the borough aforesaid for the use and benefit of the said borough; and the said *John West* well knowing but little regarding the premises, unjustly detained the said charters, books, records, muniments and ensigns of magistracy belonging to the said borough in his custody and power, and hath unjustly refused to deliver the same charters, books, records, muniments and ensigns of magistracy aforesaid to the said *Samuel*, in contempt of the said lord the king, and to the no small damage and grievance of him the said *Samuel*, and to the manifest injury of his state, as by his complaint the said lord the king hath received information; therefore the said lord the king willing that due and speedy justice should be done in that behalf to the aforesaid *Samuel*, as was just, commanded the said *John West*, as he had several times commanded him, firmly enjoining him that immediately after the receipt of that writ he should deliver or cause to be delivered all and singular the charters, books, records, muniments and ensigns of magistracy belonging to the borough aforesaid, and being in his custody, to the said *Samuel West* for the use and benefit of the same borough, or should signify to the said lord the king cause to the contrary, lest through the default of the said *John West* complaint should again come to him the said lord the king; and in what manner the said *John West* should execute that command of the said lord the king he should make to appear to the said lord the king at *Westminster* on *Friday* next after three weeks of *Easter* then next following, under the penalty of eighty pounds, (remitting the said writ of the said lord the king to him); which said writ afterwards and before the return thereof, to wit, on the 19th day of *April* in the said twelfth year of the reign of the said lord the now king was delivered to the said *John West* to be executed in form of law, to wit, at *Westminster* aforesaid, in the said county of

Middlesex; nevertheless the said *John West* the said charters, books, records, muniments and ensigns of magistracy belonging to the said borough of *Banbury* hath not delivered, or caused to be delivered to the said *Samuel West*, according to the exigency of the said writ: but the said *John West* well knowing the premises, and further contriving and falsely and maliciously intending to aggrieve him the said *Samuel West* in this behalf, and to deprive him of the custody and use of the said charters, books, records, muniments and ensigns of magistracy belonging to the said borough of *Banbury* through the whole time of his mayoralty there, on the day of the return of the said writ, to wit, the said *Friday* next after three weeks of *Easter* in the aforesaid 12th year of the reign of the said lord the now king falsely and maliciously returned to the said lord the now king in the court of him the said lord the king before the king himself (the same court being then at *Westminster* in the said county of *Middlesex*) his answer to the writ aforesaid; by which said answer so returned the said *John West* certified to the said lord the king, that divers records and ensigns of magistracy of the borough of *Banbury* aforesaid were delivered to him the said *John West* as mayor of the said borough, and by reason thereof came to the hands of him the said *John West*, and then remained in his custody upon that occasion, and not otherwise, for the use and benefit of the said borough, according to the custom of the said borough used from time whereof the memory of man is not to the contrary; and that no charters, books or muniments in the said writ named, which by reason of the office of him the said *John West*, were ever in his custody, ought to be delivered to the said *Samuel West*: and the said *John West* further certified, that the said *Samuel West* in the said writ mentioned, at the time of the date, or the teste, or the issuing of the said writ, in the said writ mentioned, or of any of them, was not nor ever afterwards was, nor then existed, mayor of the borough of *Banbury* aforesaid, and for that reason he neither could nor ought to deliver the charters, books, records, muniments and ensigns of magistracy of the borough aforesaid, or any of them to the said *Samuel West*, as by the said writ and the return thereof affiled and remaining upon record in the said court of the said lord the now king, before the king himself at *Westminster* aforesaid, more fully appears; where in truth and in fact he the said *Samuel West* in manner and form aforesaid was duly chosen, sworn and admitted into the place and office of mayor of the borough of *Banbury* aforesaid in the

The return.

Averment that the plaintiff was duly chosen mayor.

the county aforesaid, as by the said writ is above supposed, to wit, at *Banbury* aforesaid in the county of *Oxford* aforesaid; and that he the said *Samuel* before the time of the date and issuing forth of any writ of *mandamus* in this behalf, to wit, on the said 30th day of *September* in the 11th year of the reign of the said lord, the now king above-said, was and continually afterwards hitherto hath been and yet is mayor of the borough of *Banbury* aforesaid, to wit, at *Banbury* aforesaid in the county of *Oxford* aforesaid; and by reason thereof the charters, books, records, muniments and ensigns of magistracy of the borough aforesaid, ought to be delivered to him the said *Samuel* as mayor of the borough aforesaid; and where in truth and in fact the said *John West*, neither at the time of the date, or of the issuing forth of any writ of *mandamus* by him the said *Samuel West* in this behalf obtained, nor at any time afterwards hitherto was or existed mayor of the borough of *Banbury* aforesaid; and where in truth and in fact the said *John West* at the time of the date, obtaining and issuing forth of the said writ of *mandamus* of him the said *Samuel West* in this behalf, and continually afterwards hitherto hath had and hath in his hands divers charters, books and muniments belonging to the said borough; by pretence of which said false return, and of the premises, the said *Samuel West* is not only deprived of the custody and use of the said charters, books, records, muniments and ensigns of magistracy of the borough of *Banbury* aforesaid, and of his remedy for his obtaining the same, but also hath expended great sums of money in the obtaining and prosecution of the said writ of *mandamus*, and by occasion of the premises, is very much injured, to the damage of him the said *Samuel West* of 400*l.* And thereupon he brings suit, &c.

And that defendant was not mayor.

And now here at this day, to wit, *Wednesday* next after fifteen days of *Easter* in this said term, until which day the said *John* had leave to imparl to the said bill, and then to answer, &c. before the lord the king at *Westminster* come as well the said *Samuel West* by his attorney aforesaid, as the said *John* by *Francis Hayes* his attorney: and the said *John* defends the force and injury when, &c. and saith, that the said *Samuel* ought not to have or maintain his said action thereof against him, because he saith, that the said *Samuel West* at the time of the date or teste, or issuing forth of the said writs, or of any of them, was not, nor at any time afterwards hitherto hath been or existed mayor of the borough of *Banbury* aforesaid in the county of *Oxford* aforesaid; by which he the said *John* in his answer

Imparls.

Plea in bar.

to

to the writ aforesaid in the said declaration mentioned (among other things) hath returned and certified, that the said *Samuel West* in the said writ mentioned, at the time of the date or teste, or of the issuing forth of the said writs in the said writ mentioned, or of any of them, was not, nor at any time afterwards hath been, nor then existed, mayor of the borough of *Banbury* aforesaid, and for that reason he neither could nor ought to deliver the charters, books, records, muniments and ensigns of magistracy of the borough aforesaid, or any of them, to him the said *Samuel West*, as by the said declaration is supposed; and this the said *John* is ready to verify: wherefore he the said *John* prays judgment if he the said *Samuel* ought to have or maintain his said action thereof against him, &c. And the said *Samuel* saith, that he by any thing by the said *John* above in pleading alledged ought not to be barred from having his said action against him the said *John*, because he says, that the said plea by the said *John* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to bar him the said *Samuel* from having his said action thereof against the said *John*; to which said plea he the said *Samuel* hath no necessity, neither is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient answer in this behalf, he the said *Samuel* prays judgment, and his damages by occasion of the said premises, to be adjudged to him, &c.

Demurrer.

Joinder in demurrer.

And the said *John* saith, that the plea aforesaid by him the said *John* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to bar him the said *Samuel* from having his said action against him the said *John West*; which said plea, and the matter in the same contained, he the said *John* is ready to verify and prove, as the court, &c. And because the said *Samuel* hath not answered to the said plea, nor hath hitherto in any manner denied it, he the said *John* as before prays judgment, and that the said *Samuel* may be barred from having his said action thereof against him the said *John*, &c. But because the court of the said lord the king now here is not yet advised to give judgment of and concerning the premises, day thereupon is given to the parties aforesaid before the lord the king at *Westminster*, until next after to hear judgment of and concerning the premises, for that the court of the said lord the king now here is not yet, &c.

Curia advisare vult.

Pleas

*Pleas before the Lady the Queen at Westminster
of the Term of Saint Michael in the first Year
of the Reign of our Lady Ann Queen of Eng-
land, &c.*

**Booth against Johnson. Reported in Ld. Raym.
838. by the Name of Gould against Johnson.**

England, **T**HE lord William the third, late king of Eng-
(to wit,) land, &c. sent to his right trusty and well be-
loved Thomas Trevor, knight, his chief justice of the bench,
his writ close in these words, (to wit) William the third by
the grace of God, of England, Scotland, France, and Ireland
king, defender of the faith, &c. to his right trusty and well-
beloved Thomas Trevor, knight, his chief justice of the bench,
greeting: because in the record and process, and also in the
giving of judgment of a plaint which was in our court be-
fore Edward Nevill, knight, and his companions, then our
justices of the bench aforesaid, by our writ, between Tho-
mas Johnson and Mary his wife, administratrix of the goods
and chattels which were Sylvanus Rowley's gentleman, who
died intestate, as it is said, and Ann Booth, late of West-
minster in the county of Middlesex, widow, of a plea of tres-
pals upon the case, as it is said, manifest error hath inter-
vened, to the great damage of her the said Ann, as we have
received from her complaint: we willing that the error
(if any there shall have been) to be corrected in due manner,
and compleat and speedy justice to be done to the parties
aforesaid in this behalf, command you, that if judgment
thereof be given, then that you send the record and process
aforesaid with all things touching the same, to us, under
your seal, distinctly and openly, and this writ, so that we
have them from the day of Saint Michael in three weeks,
wheresoever we shall then be in England, that the said re-
cord and process being inspected, we may further do there-
upon for the correcting the error, that which of right and
according to the law and custom of our realm of England
ought to be done. Witness Thomas archbishop of Canter-
bury, and the rest of the guardians and justices of the king-
dom, at Westminster the 8th day of July in the 13th year of
our reign.

Writ of error.

Layton.

The

The Answer of Thomas Trevor, Knight, the Chief Justice within mentioned.

THE record and process of the plaint whereof mention is within made, with all things touching the same, I send before the lord the king wheresoever, &c. at the day within contained, in a certain record to this writ annexed, as I am within commanded.

Thomas Trevor.

Pleas inrolled at Westminster before Edward Nevill, Knight, John Powell, Knight, and John Blencowe, Knight, Justices of the Lord the King, of the Bench, of the Term of Easter in the thirteenth Year of the Reign of the Lord William the Third by the Grace of God, of England, Scotland, France and Ireland King, Defender of the Faith, &c. Roll 358.

Action upon a special promise to pay for lodging, &c. of two children, by plaintiffs as administrators.

Middlesex, **A**NN Booth late of Westminster in the county (to wit,) aforesaid, widow, was attached to answer *Thomas Johnson* and *Mary* his wife, administratrix of the goods and chattels which were *Sylvanus Rowley's* deceased, of a plea of trespass upon the case, &c. And whereupon the said *Thomas* and *Mary*, by *Charles Chambers* their attorney complain, that whereas the said *Ann* on the first day of *June* in the year of our Lord 1685, at Westminster in the county aforesaid, in consideration that the said *Sylvanus* in his life-time, at the special instance and request of the said *Ann*, would receive into his dwelling-house, situate in *High-downe* in the county of *Hertford*, one *Christopher Cripps*, a child of the said *Ann*, and one *William Cripps* another child of the said *Ann*, as guests, with the said *Sylvanus*, and would find and provide for the same *Christopher* and *William* meat, drink, washing and lodging, and all other things fitting, convenient and necessary, assumed upon herself, and to the said *Sylvanus* in his life-time then and there faithfully promised, that she the said *Ann* would well and faithfully pay and satisfy to the said *Sylvanus* as much money as the said *Sylvanus* should reasonably deserve to have for the same, for such time as the said *Christopher Cripps* and *William Cripps* should remain as lodgers with the said *Sylvanus* in his said house, when she should be thereunto afterwards required: and the said *Thomas* and *Mary* in fact say, that the said *Sylvanus* in his life-time, confiding in the promise and under-

undertaking of the said *Ann* in form aforesaid made, afterwards to wit, on the 29th day of *September* in the year of our Lord 1685 aforesaid, received the said *Christopher Cripps*, a child of the said *Ann*, into his said house, and that the said *Christopher* remained in the said dwelling-house of him the said *Sylvanus* from the said 29th day of *September* in the year of our Lord 1685 aforesaid, for the space of six years then next following at *Highbowne* aforesaid: and that he the said *Sylvanus* in his life-time found and provided for the said *Christopher Cripps* meat, drink, washing and lodging, and all other things fitting and convenient and necessary for the whole time aforesaid, and that the said *Sylvanus* in his life-time afterwards, to wit, on the first day of *October* in the year of our Lord 1685 aforesaid, received the said *William Cripps*, the other child of her the said *Ann*, into his said house; and that the said *William* remained in the said dwelling-house of him the said *Sylvanus* from the said first day of *October* in the year of our Lord 1685 aforesaid, for the space of seven years then next following; and that he the said *Sylvanus* in his life-time found and provided for the said *William Cripps* meat, drink, washing and lodgings, and all other things necessary and convenient for the whole time aforesaid: and they the said *Thomas* and *Mary* further in fact say, that the said *Sylvanus* in his life-time reasonably deserved to have eighty pounds of lawful money of *England* for the said meat, drink, washing and lodging, and other things fitting, necessary and convenient for the said *Christopher*, for the space of six years so as aforesaid found and provided; and that the said *Sylvanus* reasonably deserved to have other eighty pounds of the like lawful money of *England* for the said meat, drink, washing and lodging, and other things fitting, necessary and convenient for the said *William* for the space of seven years so as aforesaid found and provided, whereof the said *Ann* had notice. And also whereas the said *Ann* afterwards, to wit, on the first day of *April* in the year of our Lord 1695, at *Westminster* aforesaid, in consideration that the said *Sylvanus* in his life-time, at the special instance and request of the said *Ann* had found and provided for *Christopher Cripps* and *William Cripps*, certain children, of her the said *Ann*, other meat, drink, washing, lodging, apparel, and other necessaries, for the space of other six years then past, and at the like instance and request of her the said *Ann* had expended and laid out divers sums of money in the tuition and instruction of them the said *Christopher* and *William*, assumed upon herself, and to the said *Sylvanus* then and there faithfully promised that she the said *Ann* would well and faithfully pay and satisfy to the said *Sylvanus* so much money as he the said *Sylvanus* reasonably

Pleadings to the C A S E S.

~~was~~ deserved to have for the said meat, drink, wash-
 ing, lodging, apparel, and other necessities last mentioned,
 by the said *Sylvanus* for the said *Christopher* and *William* so
 as aforesaid found and provided, and also so much money
 as the said *Sylvanus* for the tuition and instruction of them
 the said *Christopher* and *William* had expended and laid out,
 when she should be thereunto afterward required: and the
 said *Thomas* and *Mary* in fact say, that the said *Sylvanus*
 in his life-time reasonably deserved to have one hundred
 pounds of lawful money of *England* for the said meat,
 drink, washing, lodging, apparel, and other necessities by
 him the said *Sylvanus* in his life-time for the said *Christopher*
 and *William* for the space of time aforesaid last mentioned
 found and provided, as before is set forth: and that he
 the said *Sylvanus* in his life-time, for the tuition and in-
 struction of them the said *Christopher* and *William*, expended
 and laid out another hundred pounds of the like lawful
 money, whereof the said *Ann* then and there had notice.
 And also whereas the said *Ann* afterwards, to wit, on the
 second day of *April* in the year of our Lord 1695 aforesaid,
 at *Westminster* aforesaid, was indebted to the said *Sylvanus*
 in his life-time in another hundred pounds of lawful money of
England, for other meat, drink, washing and lodging, and
 other things fitting, necessary and convenient by the said
Sylvanus in his life-time for the said *Christopher Cripps* and
William Cripps, the children of her the said *Ann*, at the spe-
 cial instance and request of her the said *Ann*, for the space
 of other six years then past found and provided, and also
 for divers sums of money by the said *Sylvanus* for the said
Christopher and *William* at the like instance and request of
 her the said *Ann*, before that time expended and laid out;
 and being thereof so indebted, the said *Ann* afterwards, to
 wit, on the same day and year at *Westminster* aforesaid, in
 consideration thereof assumed upon herself, and to the said
Sylvanus in his life-time then and there faithfully promised
 that she the said *Ann* would well and faithfully pay and sa-
 tisfy to the said *Sylvanus* the said one hundred pounds last
 mentioned; when she should be thereunto afterwards re-
 quested. And also whereas the said *Sylvanus* in his life-
 time, that is to say, on the third day of *April* in the year of
 our Lord 1695 aforesaid, at *Westminster* aforesaid, accounted
 together with the said *Ann* concerning divers sums of money
 to the said *Sylvanus* in his life-time by the said *Ann* owing
 and unpaid, and upon that account the said *Ann* was found
 in arrear towards the said *Sylvanus* in his life-time in forty
 pounds of lawful money of *England*; and being so found in
 arrear, the said *Ann* afterwards, to wit, on the same day
 and

and year at *Westminster* aforesaid, in consideration thereof assumed upon herself, and to the said *Sylvanus* in his life-time then and there faithfully promised that she the said *Ann* would well and faithfully pay and satisfy to the said *Sylvanus* the said forty pounds, when she should be thereunto afterwards requested: nevertheless the said *Ann* not regarding her said several promises and undertakings made in manner aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Sylvanus* in his life-time, and the said *Thomas* and *Mary*, after the death of the said *Sylvanus*, the said several sums of money, or any part thereof, to the said *Sylvanus* in his life-time, or to the said *Mary* after the death of the said *Sylvanus* while she was sole, or to the said *Thomas* and *Mary* after the espousals between them celebrated, (to which said *Mary*, administration of all and singular the goods, rights and credits which were the said *Sylvanus*'s at the time of his death, by *George Barnardiston*, master of arts, commissary and official rightly and lawfully constituted in and through the archdeaconry of *Huntingdon*, on the 4th day of the month of *April* in the year of our Lord 1699, at *Westminster* aforesaid, after the death of him the said *Sylvanus*, according to due form of law was committed) hath not paid, or in any manner satisfied, (altho' to do this the said *Ann* by the said *Sylvanus* in his life-time, to wit, the 4th day of *April* in the year of our Lord 1695 aforesaid, and by the said *Mary* after the death of the said *Sylvanus* while she was sole, to wit, on the 10th day of *April* in the year of our Lord 1699 aforesaid, and by the said *Thomas* and *Mary* after the espousals between them celebrated, to wit, on the first day of *January* in the year of our Lord 1699 aforesaid, at *Westminster* aforesaid, was requested,) but the same to the said *Sylvanus* in his life-time, or to the said *Mary* after the death of the said *Sylvanus* while she was sole, or to the said *Thomas* and *Mary*, after the espousals between them celebrated, to pay, or in any way satisfy hath wholly refused, and yet doth refuse, to the damage of the said *Thomas* and *Mary* of fifty pounds; and thereupon they bring suit, &c. And the said *Thomas* and *Mary* bring here into court the letters of administration of the said official, which testify the commission of administration aforesaid, in form aforesaid.

And the said *Ann* by *John Smith* her attorney comes and defends the force and injury when, &c. and saith, that the said *Thomas* and *Mary* ought not to have their said action thereof against her, because she saith, that she did not assume upon herself at any time within six years next before the day

Plea did not
promise within
six years.

day of obtaining the original writ of them the said *Thomas* and *Mary*, in manner and form as the said *Thomas* and *Mary* above complain against her; and this she is ready to verify; wherefore she prays judgment if the said *Thomas* and *Mary* ought to have their said action thereof against her, &c.

Replication.
That the action
accrued to
plaintiffs within
six years.

And the said *Thomas* and *Mary* say, that they by any thing before by the said *Ann* in pleading alledged ought not to be barred from having their said action against the said *Ann*, because they say, that within six years now last past, to wit, on the said 4th day of *April* in the year of our Lord 1696 aforesaid, the said administration to her the said *Mary* was in due manner committed in form aforesaid, to wit, at *Westminster* aforesaid, by which the said action accrued to them the said *Thomas* and *Mary* within six years; and this they are ready to verify: wherefore they pray judgment and their damages aforesaid by reason of the premises, to be adjudged to them, &c.

Demurrer.

And the said *Ann* saith, that the plea of them the said *Thomas* and *Mary* above pleaded in reply is not sufficient in law for the said *Thomas* and *Mary* to have and maintain their said action against the said *Ann*; to which said plea in manner and form aforesaid pleaded the same *Ann* hath no necessity, neither is she bound by the law of the land in any manner to answer; and this she is ready to verify; wherefore she prays judgment, and that the said *Thomas* and *Mary* may be barred from having their said action against the said *Ann*, &c.

Joinder in demurrer.

And the said *Thomas* and *Mary* inasmuch as they have above in reply alledged sufficient matter in law to have and maintain their said action against the said *Ann*, which they are ready to verify; which said matter the said *Ann* doth not deny, nor hath in any manner answered it, but wholly refuses to admit that averment, they as before pray judgment and their damages, by reason of the premises, to be adjudged to them, &c. And hereupon the premises, being seen, and by the justices here fully understood, it seemeth to the same justices here that the said plea of the said *Thomas* and *Mary* above pleaded in reply is sufficient in law for them the said *Thomas* and *Mary* to have and maintain their said action against the said *Ann*, as they the said *Thomas* and *Mary* have above alledged; wherefore the said *Thomas* and *Mary* ought to recover their damages by reason of the premises against the said *Ann*: but because it is unknown what damages the said *Thomas* and *Mary* have sustained by reason of the premises, the sheriff is commanded, that by the oath of honest and lawful men of his bailiwick he diligently

Judgment for
the plaintiff.

ligently inquire what damages the said *Thomas* and *Mary* have sustained, as well by reason of the premises, as for their costs and charges by them about their suit in this behalf laid out; and the inquisition which, &c. that the sheriff do make to appear here on the morrow of the Holy Trinity, under the seal, &c. and the seals, &c. At which day here come the said *Thomas* and *Mary* by their said attorney, and the sheriff, to wit, *Robert Beachcroft*, knight, and *Henry Furnesse*, knight, now return here a certain inquisition taken before him at the *Hercules Pillars* in *Brook-street* in the county aforesaid, on the thirteenth day of *June* last past, by the oath of twelve, &c. by which it is found that the said *Thomas* and *Mary* have sustained damages by reason of the non-performance of the said first promise, besides their costs and charges by them about their suit in this behalf laid out, to fifty-two pounds and one shilling, and also damages by reason of the non-performance of the rest of the promises aforesaid, besides their costs and charges as aforesaid laid out, to three pence, and for those costs and charges to twenty shillings: and hereupon the said *Thomas* and *Mary* freely here in court do remit to the said *Ann* forty and one shillings, parcel of the said fifty-two pounds and one shilling, upon the said first promise aforesaid by the said inquisition, in manner aforesaid above found, and the said three pence, upon the rest of the said promises by the said inquisition in manner aforesaid likewise found: therefore the said *Ann* is quit of the said forty and one shillings and three pence, &c. And the said *Thomas* and *Mary* pray judgment of the residue of the damages and of the costs and charges aforesaid by the said inquisition in manner aforesaid likewise found, and an increase thereof, to be adjudged to them, &c. Therefore it is considered that the said *Thomas* and *Mary* do recover against the said *Ann* fifty pounds, parcel of the said fifty-two pounds and one shilling, upon the said first promise by the inquisition aforesaid above found, and the said twenty shillings for their costs and charges by the same inquisition in manner aforesaid likewise found; and also twenty-six pounds to the said *Thomas* and *Mary*, at their request, for their costs and charges aforesaid by the court here, by way of increase adjudged; which said damages in the whole amount to seventy and seven pounds; and the said *Ann* in mercy, &c.

Writ of inquiry
awarded.

Damages on the
first count.

Damages on the
rest of the
counts.

Remittitur of
part of damages.

Final judgment

Mercy.

Assignment of
errors.

Afterwards, to wit, on *Saturday* next after the octave of *Saint Martin* in this same term (before which day the said lord *William* the third, late king of *England*, &c. died) before our lady the queen at *Westminster* cometh the said *Ann Booth* by *John Buxton* her attorney, and saith, that in the
record

record and process aforesaid, and also in the giving the judgment aforesaid, there is manifest error in this, to wit, that where by the record aforesaid it appears that the judgment aforesaid, in the plea aforesaid given was given for the said *Thomas Johnson* and *Mary* his wife against the said *Ann Booth*, where by the law of the land of this kingdom of *England* judgment in the same plea ought to have been given for the said *Ann Booth* against the said *Thomas Johnson* and *Mary* his wife, therefore in that there is manifest error; and she prays that the judgment aforesaid for that error and others being in the record and process aforesaid may be reversed, annulled, and wholly holden for nought; and that the said *Ann* may be restored to all that she hath lost by occasion of the said judgment; and that the said *Thomas* and *Mary* may rejoin to the errors aforesaid, &c.

In nullo est erratum.

And the said *Thomas* and *Mary* by *John Lilly* their attorney come and immediately say, that neither in the record and process aforesaid, nor in the giving of the judgment aforesaid, is there any error; and pray that the court of our said lady the queen now here may proceed to the examination as well of the record and process aforesaid, as the matters aforesaid by her the said *Ann Booth* above assigned for error; and that the judgment aforesaid in all things may be affirmed: but because the court, &c.

Pleas before the Lady the Queen at Westminster of the Term of Saint Michael in the first Year of the Reign of our Lady Ann Queen of England, &c. Roll 313.

Bennet against Purcell. Reported in Ld. Raym. 848.

Action on the case by a captain against a colonel of a regiment for pay.

Middlesex, BE it remembered, that on *Friday* next after (to wit) **B** three weeks of *Saint Michael* in this same term before our lady the queen at *Westminster* came *Joseph Bennet*, esq; by *Francis Hardy* his attorney, and brought into the court of our said lady the queen now here his certain bill against *Tobias Purcell*, esq; being in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, to wit. *Middlesex*, to wit, *Joseph Bennet*, esq; complains of *Tobias Purcell*, esq; in the custody of the marshal of the *Marshalsea*

Shalsea of our lady the queen, being before the queen herself, of a plea of trespass upon the case, for that, (to wit) that whereas he the said *Joseph* now is, and for divers years heretofore, to wit, in the time of *William* the third, late king of *England*, &c. hath been a captain, lawfully constituted and appointed by the said late king and our lady the now queen, to a certain company of their soldiers in the service of this kingdom, as well to order and govern, as to consult and appoint in military affairs, and other warlike necessities arising and happening in battle and war; and by reason thereof hath had and been accustomed, and ought to have for himself, and on the behalf of such soldiers substituted and placed under him, certain several sums of money as wages, salaries and rewards for their respective services, usually paid to them by the day, or by the month, or to other military officers, to himself the said *Joseph*, and other such captains appointed to such uses and purposes as aforesaid, paid by our said lady the now queen and the said late king, or by such persons as by them have been and are appointed, deputed and authorised to act and pay such wages, salaries and rewards. And also whereas the said *Tobias* on the tenth day of *March* in the first year of the reign of our lady the now queen, was indebted to the said *Joseph* in seventy pounds of lawful money of *England*, for money of him the said *Joseph*, to himself as is aforesaid by reason of his said office, due and payable by him the said *Tobias* before that time, he being then an officer, commanding the said *Joseph*, to wit, the colonel of the regiment in which he served under him as captain, received and had from the publick office appointed by the said late king to make such payments; and being so indebted, the said *Tobias* the same day and year at the parish of *Saint Martin in the Fields* in the county aforesaid, in consideration thereof assumed upon himself, and to the said *Joseph* then and there faithfully promised that he the said *Tobias* the same sum of money as aforesaid by him received well and faithfully would pay and satisfy; and also whereas the said *Tobias* on the day and year aforesaid was indebted to the said *Joseph* in other seventy pounds of lawful money of *England*, for money by him the said *Tobias* to the use of him the said *Joseph* before that time had and received; and being thereof so indebted, the said *Tobias* the same day and year at the parish aforesaid in the county aforesaid, in consideration thereof assumed upon himself, and to the said *Joseph* then and there faithfully promised that he the said *Tobias* would well and faithfully pay and satisfy the sum of money last mentioned, when he should be thereunto required. And also whereas the

the said *Tobias* the day and year aforesaid was indebted to the said *Joseph* in other seventy pounds, for money by him the said *Joseph* to the use and at the special instance and request of him the said *Tobias* before that time paid, expended, disbursed and laid out; and being thereof so indebted the said *Tobias* the said day and year at the parish aforesaid in the county aforesaid, in consideration thereof assumed upon himself, and to the said *Joseph* then and there faithfully promised that he the said *Tobias* would well and faithfully pay and satisfy the said sum of seventy pounds last mentioned to the said *Joseph* when he should be thereunto requested. And also whereas the said *Tobias*, the same day and year was indebted to the said *Joseph* in other seventy pounds of lawful money of *England*, for the like sum of money which for and on the behalf of the said *Tobias*, and at his instance and request the said *Joseph* before that time had paid to the said late king, to whom the said *Tobias* then did stand justly indebted, and ought to have paid it; and being thereof so indebted, the said *Tobias* the day and year aforesaid, at the parish aforesaid in the county aforesaid, in consideration thereof assumed upon himself and to the same *Joseph* then and there faithfully promised, that he the said *Tobias* would well and faithfully pay and satisfy the said seventy pounds last mentioned to the said *Joseph*, when he should be thereunto required: nevertheless the said *Tobias* not at all regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *Joseph* in this behalf, the said several sums of money, or any part thereof, (although often required) to the said *Joseph* hath not paid, or in any manner satisfied, but to pay the same to him hath hitherto wholly refused, and yet doth refuse, to the damage of him the said *Joseph* of one hundred pounds; and thereupon he brings suit, &c.

Plea, that defendant was a Gentleman, and not an Esquire, in abatement.

And the said *Tobias Purcell*, against whom the said bill is exhibited by the name of *Tobias Purcell*, Esquire by *Henry Wright* his attorney, comes and defends the force and injury; and saith, that he ought not to be compelled to answer to the said bill, because he saith, that he at the time of exhibiting the said bill was a Gentleman, and not an Esquire, as by the said bill is above supposed, to wit, at the parish aforesaid in the county aforesaid; and this he is ready to verify: wherefore as he is named Esquire in the said bill, he prays judgment of the said bill, and that the bill may be quashed, &c.

Replication, protesting that the matter in the plea is in-

And the said *Joseph Bennet* saith, that by any thing by the said *Tobias* above in pleading alledged, the said bill of him the said *Joseph* ought not to be quished, because protesting

telling that the plea aforesaid above pleaded in abatement of the said bill of him the said *Joseph*, and the matter in the same contained in manner and form aforesaid pleaded, are not sufficient in law for this cause, (among others) that is to say, for that the action or cause of him the said *Joseph* is an action or cause prosecuted by a bill, and without the original writ of our lady the now queen, in which no outlawry lieth or can lie upon such bill; neither is it provided by the statute of additions lately set forth, that any additions shall be in such actions so prosecuted; and so it is immaterial in this action whether the said *Tobias* be a Gentleman or an Esquire: nevertheless for plea the said *Joseph* saith and asserts, that long before, and at the time of exhibiting of his bill aforesaid, the said *Tobias* was esteemed and reputed as well an Esquire as a Gentleman, but more especially an Esquire, by reason and in respect not only of his parentage, but also of his most worthy employment: and this he prays that it may be inquired of by the country.

sufficient, and that in an action by bill, an addition is immaterial.

Yet for replication says defendant is an Esquire, and goes to the country.

And the said *Tobias* saith, that the said plea by the said *Joseph* in manner and form aforesaid above pleaded in reply, and the matter in the same contained, are not sufficient in law to compel him the said *Tobias* to answer to the said bill of him the said *Joseph*, to which the said *Tobias* hath no necessity, neither is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient replication in this behalf, the said *Tobias*, as before, prays judgment of the bill aforesaid, and that the bill may be quashed, &c.

Demurrer.

And the said *Joseph Bennet* saith, that the said plea by him the said *Joseph* in manner and form aforesaid above pleaded in reply, and the matter in the same contained, are good and sufficient in law to compel him the said *Tobias* to answer to the said bill of him the said *Joseph*; which said plea, and the matter in the same contained, the said *Joseph* is ready to verify and prove, as the court, &c. And because the said *Tobias* doth not answer to that plea, nor in any manner denies it, he the said *Joseph* prays judgment, and that the said *Tobias* may answer over to the said bill of the said *Joseph*: but because the court of our said lady the now queen here are not yet advised of their judgment to be given of and concerning the premisses, day thereupon is given to the parties aforesaid, before our lady the queen at *Westminster*, until *Saturday* next after the octave of *St. Martin*, to hear their judgment of and concerning the premisses, for that the court of our said lady the queen now here is not yet, &c.

Joinder in demurrer.

Judgment that the defendant answer over.

Pleas before the Lord the King at Westminster of the Term of Saint Hilary, in the twelfth Year of the Reign of the Lord William the Third, by the Grace of God, now King of England, &c.

Amongst the Pleas of the Crown. Roll 38.

The King against Watfon. Reported in 2 Ld. Raym. 856.

Indictment for not repairing a house adjoining to a bridge in Lynn, which defendant was obliged to repair by reason of his tenure thereof.

The borough of *King's Lynn* in the county of *Norfolk*, (to wit) **B**E it remembered, that heretofore, that is to say, on *Thursday* the 11th day of *January* in the 11th year of the reign of our sovereign lord *William* the third, by the grace of God, of *England, Scotland, France and Ireland*, king, defender of the faith, &c. at the general sessions of the peace and gaol-delivery of the lord the king, held for the borough aforesaid, and the liberty of the same borough, at the *Guildhall* of the said borough, before *Robert Awborne*, esq; mayor, *Daniel Bedingsfield*, esq; recorder, *Benjamin Keene*, *Robert Sparrow*, and others their fellows, justices of the said lord the king, assigned to keep his peace within the borough aforesaid, and the liberty of the same borough, and to deliver the gaol within the said borough of the prisoners being in the same, and also to hear and determine divers felonies, trespasses and misdemeanors committed in the said borough, and the liberty of the same borough, by the oath of twelve jurors, of honest and lawful men of the borough aforesaid, then and there impanelled and sworn to inquire for the said lord the king and the body of the borough aforesaid, it was presented at large, that *James Watfon*, late of *King's Lynn* in the county of *Norfolk*, victualler, on the first day of *January* in the 11th year of the reign of our sovereign lord *William* the third, now king of *England*, &c. and continually from that time until the day of the taking of the said inquisition hath been possessed, and yet is possessed of a certain messuage or dwelling-house, with the appurtenances, situate and being in *King's Lynn* aforesaid, within the borough aforesaid and liberty thereof, and within the jurisdiction of this court, adjoining to a certain bridge called *Stonebridge*, and upon a certain common fleet or sewer called *Purfleetdraine*, formerly built, (the same

bridge being the king's common highway there); and that by reason of his tenure thereof, he the said *James* hath been obliged, and ought well and sufficiently to repair and maintain the foundation of the said messuage or dwelling-house upon the fleet or sewer aforesaid: nevertheless the said *James* for all the time aforesaid hath suffered, and yet suffers the foundation of the said messuage or dwelling-house to lie and continue in great decay and ruin for want of due reparation thereof, by which the said messuage or dwelling house hath been and yet is very like to fall down into the said common fleet and sewer, and in and upon the said bridge, to the great danger of killing the liege men and subjects of the said lord the king passing, residing and working on, by, over and under the said bridge, and to the no small fear and grievance of them the said liege men and subjects of the said lord the king, to the evil example of others in such case delinquent, and against the peace of the said lord the now king, his crown and dignity; which said indictment the lord the now king afterwards for certain causes caused to come to be determined before himself, &c. Wherefore the sheriff was commanded, that he should not omit, &c. but that he should cause the said *James Watson* to come to answer, &c. And now, to wit, on *Thursday* next after the octave of *St. Hilary* in this same term before the lord the king at *Westminster* cometh the said *James Watson* by *Richard Foulkes* his attorney, and having heard the indictment aforesaid, saith, that he is not guilty thereof; and of this he puts himself upon the country; and *Samuel Asty*, knight, coroner and attorney of the lord the king, in the court of the said lord the king before the king himself, who prosecutes for the said lord the king in this behalf likewise, &c. Therefore let a jury thereupon come before the said lord the king from *Easter* day in fifteen days, wheresoever, &c. by whom, &c. and who, &c. to recognize, &c. because as well, &c. The same day is given as well to the said *Samuel Asty*, knight, who prosecutes, &c. as to the said *James Watson*, &c. At which said fifteen days of *Easter*, before the said lord the king at *Westminster*, come as well the said *Samuel Asty*, knight, who prosecutes, &c. as the said *James Watson* by his attorney aforesaid: and the sheriff hath not sent the writ thereof: therefore, as before, let a jury come thereupon before the said lord the king on the morrow of the Holy Trinity, wheresoever, &c. by whom, &c. and who, &c. to recognize, &c. because as well, &c. The same day is given as well to the said *Samuel Asty*, knight, who prosecutes, &c. as to the said *James Watson*, &c. On which said morrow of the Holy

The indictment
removed to B.
R.

Plea. Not
guilty.

Ventre awarded.

The sheriff non
misit breve.

Return of the
venire.

Writings a-
warded.

Writ prius at
Norwich.

Process.

Facts.

Trinity before the said lord the king at *Westminster* come as well the said *Samuel Asty*, knight, who prosecutes, &c. as the said *James Watson* by his attorney aforesaid: and the sheriff hath returned the names of twelve jurors, of whom none, &c. Therefore the sheriff of the county aforesaid is commanded, that he do not omit, &c. but that he distrain them by all their lands, &c. And that of the issues, &c. so that he may have their bodies before the said lord the king from the day of Saint *Michael* in three weeks, where-soever, &c. or before the justices of the said lord the king, assigned to take the assizes in the county of *Norfolk* aforesaid, if they shall before come on *Thursday* the 14th day of *August*, at the castle of *Norwich* in the county aforesaid, by form of the statute, &c. for want of jurors, &c. Therefore let the sheriff have the bodies, &c. to recognize in form aforesaid. The same day is given as well to the said *Samuel Asty*, knight, who prosecutes, &c. as to the said *James Watson*, &c. At which said three weeks of St. *Michael*, before the said lord the king at *Westminster*, come as well the said *Samuel Asty*, knight, who prosecutes, &c. as the said *James Watson* by his attorney aforesaid. And the justices aforesaid, before whom, &c. have sent here their record before them had in these words: Afterwards on the day and at the place within contained, before *Thomas Trevor*, knight, chief justice of the lord the king of the bench, and *Robert Tracy*, esq; one of the barons of the exchequer of the said lord the king, justices of him the said lord the king assigned to take the assizes in the county of *Norfolk*, by form of the statute, &c. came as well the within named *Samuel Asty*, knight, coroner and attorney of the said lord the king in the court of him the said lord the king before the king himself, who prosecutes, &c. in his proper person, as the within written *James Watson* by his attorney within contained, and the jurors of the jury, whereof mention is within made, being called, certain of them, to wit, *Thomas Woodrowe*, *Samuel Jellians*, *Henry Utting*, *John Kingwood*, *Thomas Ward*, *Thomas Backe*, *John Butler*, *Thomas Pycroft*, *John Haylett*, *Thomas Norris* and *Francis Fisher* came, and are sworn upon the jury aforesaid; and because the rest of the jurors of the same jury did not appear, therefore another of the bye-standers, being chosen for this purpose by the sheriff of the county aforesaid, at the request of *Edward Northey*, esq; attorney general of the said lord the king, and by the command of the said justices newly appointed, whose name is assiled in the panel within written, according to the form of the statute in such case lately made and provided; which said juror so newly appointed, to wit, *William Sheene* being called

called likewise came: and hereupon publick proclamation was made here in court for the said lord the king, (as the custom is) that if there was any one who would inform the justices aforesaid, the said lord the king's serjeant at law, the said king's attorney general, or the jury within written, of the premisses within contained, he might come forth and be heard: and *Charles Whitaker*, esq; one of the serjeants at law of the said lord the king, offered himself to do this; whereupon it was proceeded to take the jury aforesaid, by the said jurors now appearing thereupon, who were chosen, tried and sworn to speak the truth concerning the matter within contained. And afterwards one of the jurors aforesaid, to wit, *Francis Fisher* of *Blo Norton*, with the consent as well of the said *Samuel Astry*, knight, who prosecutes, &c. as of the said *James Watson*, was absolutely withdrawn by the court from the panel within written, and the rest of the jurors, with the consent as well of the said *Samuel Astry*, knight, who prosecutes, &c. as of the said *James Watson*, are discharged by the justices aforesaid from saying any thing now of their verdict of and upon the premisses: therefore the sheriff of the county aforesaid is commanded, that (the said *Francis Fisher* being removed) he do not omit, &c. but that he distrain the jurors before impanelled by all their lands, &c. and that of the issues, &c. so that he may have their bodies before the said lord the king on the octave of Saint *Hilary*, wheresoever, &c. to recognize in form aforesaid. The sheriff of the county aforesaid is also commanded, that he do not omit, &c. but that he put ten such, &c. and who, &c. and that he have them before the said lord the king at the aforesaid term, to recognize, &c. in form aforesaid, so that, &c. The same day is given as well to the said *Samuel Astry*, knight, who prosecutes, &c. as to the said *James Watson*, &c. At which said octave of Saint *Hilary* before the said lord the king at *Westminster* came as well the said *Samuel Astry*, knight, who prosecutes, &c. as the said *James Watson* by his attorney aforesaid; and the sheriff hath not thereupon sent the writ: therefore, as before, the sheriff of the county aforesaid is commanded, that (the said *Francis Fisher* being removed) he do not omit, &c. but that he distrain the jurors before impanelled by all their lands, &c. and that of the issues, &c. so that he may have their bodies before the said lord the king from *Easter* day in fifteen days, wheresoever, &c. or before the justices of the said lord the king, assigned to take the assizes in the county of *Norfolk* aforesaid, if they shall before come on *Thursday* the 19th day of *March* at *Thetford* in the county aforesaid, by form of the statute, &c.

The trial put off by a juror being withdrawn.

Decem tales awarded.

The sheriff may *mit breve*.

Nisi prius at *Thetford*.

for

A second *decem*
tales.

The death of
the king.

A third *decem*
tales.

for want of jurors: therefore let the sheriff have the bodies, &c. to recognize in form aforesaid: the sheriff of the county aforesaid is also commanded, that he do not omit, &c. but that he put ten such, &c. by whom, &c. and who, &c. And that he have them before the said lord the king at the said fifteen days of *Easter*, wheresoever, &c. or before the said justices of the said lord the king, assigned to take the assises in the county aforesaid, if they shall before come, on the said *Thursday* the 19th day of *March* at *Thetford* aforesaid in the county aforesaid, by form of the statute, &c. for want of jurors, &c. Therefore let the sheriff have the bodies, &c. to recognize in form aforesaid, &c. so that &c. The same day is given as well to the said *Samuel Astry*, knight, who prosecutes, &c. as to the said *James Watson*, &c. At which said fifteen days of *Easter*, before which date our late sovereign lord *William* the third, king of *England*, &c. died, and the rule and government of this realm of *England* descended to the most serene lady *Anne*, now queen of *England*, &c. which said lady *Anne* hath taken upon herself the rule and government thereof: and at the same fifteen days of *Easter* the process aforesaid was adjourned by the writ of the said lady *Anne*, now queen of *England*, &c. of common adjournment, before the said lady the queen, until from *Easter* day in three weeks, wheresoever, &c. At which said three weeks of *Easter*, before the said lady the queen at *Westminster*, come as well the said *Samuel Astry*, knight, who prosecutes, &c. as the said *James Watson* by his attorney aforesaid. And the sheriff of the county of *Norfolk* aforesaid hath not thereupon sent the writ, nor the justices the record, therefore, as before, the sheriff of the county aforesaid is commanded, that (the said *Francis Fisher* being removed) he do not omit, &c. but that he distrain the jury before impanelled by all their lands, &c. and that of the issues, &c. so that he may have their bodies before the said lady the now queen on the morrow of the Holy Trinity, wheresoever, &c. to recognize in form aforesaid. The sheriff of the county aforesaid is also commanded, that he do not omit, &c. but that he put ten such, &c. and who, &c. and that he have them before the said lady the queen at the said term to recognize in form aforesaid, so that, &c. The same day is given as well to the said *Samuel Astry*, knight, who prosecutes, &c. as to the said *James Watson*, &c. At which said morrow of the Holy Trinity, before the said lady the now queen at *Westminster*, come as well the said *Samuel Astry*, knight, who prosecutes, &c. as the said *James Watson* by his attorney aforesaid; and the sheriff hath not thereupon sent the writ,
nor

nor the justices the record, therefore, as before, the sheriff of the county aforesaid is commanded, that (the said *Francis Fisher* being removed) he do not omit, &c. but that he distrain the jury before impanelled by all their lands, &c. and that of the issues, &c. so that he may have their bodies before the said lady the queen from the day of *St. Michael* in three weeks, wheresoever, &c. or before the justices of the said lady the now queen, assigned to take the assises in the county of *Norfolk* aforesaid, if they shall before come, on *Tuesday* the fourth day of *August*, at the castle of *Norwich* in the county aforesaid, by form of the statute, &c. for want of jurors, &c. Therefore let the sheriff have the bodies, &c. to recognize in form aforesaid. The sheriff of the said county is also commanded, that he do not omit, &c. but that he put ten such, &c. by whom, &c. and who, &c. And that he have them before the said lady the queen at the said three weeks of *St. Michael*, wheresoever, &c. or before the said justices of the said lady the now queen, assigned to take the assises in the county aforesaid, if they shall before come, on the said *Tuesday* the fourth day of *August*, at the said castle of *Norwich* in the county aforesaid, by form of the statute, &c. for want of jurors, &c. Therefore let the sheriff have their bodies, &c. to recognize in form aforesaid, so that, &c. The same day is given as well to the said *Samuel Asty*, knight, who prosecutes, &c. as to the said *James Watson*, &c. At which said three weeks of *St. Michael*, before the said lady the queen at *Westminster*, come as well the said *Samuel Asty*, knight, who prosecutes, &c. as the said *James Watson* by his attorney aforesaid. And the said justices, before whom, &c. have sent here their record before them had in these words: Afterwards on the day and at the place within contained, before *Edward Nevill*, knight, one of the said lady the queen her justices of the bench, and *Robert Price*, esq; one of the barons of the exchequer of the said lady the queen, justices of the said lady the queen, assigned to take the assises in the county of *Norfolk*, by form of the statute, &c. came as well the within named *Samuel Asty*, knight, coroner and attorney of the said lady the queen in the court of the said lady the queen before the queen herself, who prosecutes, &c. in his proper person, as the within written *James Watson* by his attorney within contained: and hereupon public proclamation was made here in court for the said lady the queen, as the custom is, that if there was any one who would inform the justices aforesaid, the said queen's serjeant at law, the said queen's attorney general, or the jury within written, concerning the premises,

*Nisi prius at
Norwich.*

*Fourth d. com
sales*

Postea.

he

Talu.

Writ of adjournment.
Special verdict.

he might come forth and be heard; and *Charles Whitaker*, esq; serjeant at law, offered himself to do this; whereupon it was proceeded to take the jury aforesaid; and the jurors of the jury, whereof mention is within made, being called, certain of them, to wit, *John Elgar*, *Samuel Scarfe*, *Thomas Woodrowe*, *Samuel Fellians*, *John Lingwood*, *John Butler*, *John Haylett*, *Thomas Morris*, *John Gamble* and *Charles Bullock* came, and are sworn upon that jury: and because the rest of the jurors of the said jury did not appear, therefore others of the by-standers, by the sheriff of the county aforesaid to this being chosen, at the request of the said *Samuel Asty*, and by the command of the justices aforesaid are newly appointed, whose names are affixed in the panel within written, according to the form of the statute in such case lately made and provided; which said jurors so newly appointed, to wit, *William Sheen* and *Edward Roberts* being called likewise came, who being chosen, tried and sworn to speak the truth concerning the matter within contained, together with the other jurors aforesaid before impanelled and sworn say upon their oath, that the within named *James Watson*, at the time of the indictment within specified against him for the matters within contained, and for ten years before, was possessed of the messuage or dwelling-house within specified; and that one *Sarah Davy*, widow, who at the same time dwelt at *Exeter* out of the jurisdiction of the court of the borough of *King's Lynn* within written at the time of the indictment aforesaid, and also for the whole time aforesaid, was seised of and in the messuage or dwelling-house aforesaid; and being so seised thereof, demised the said messuage or dwelling-house, with the appurtenances, to the said *James*, to hold to the said *James* at the will only of them the said *Sarah* and *James*; but whether the said *James* be chargeable to repair the messuage or dwelling-house aforesaid, and the foundation thereof, by reason of his tenure, the jurors aforesaid are wholly ignorant, and pray the advisement of the court in the premises: and if upon the whole matter aforesaid, by the jurors aforesaid in form aforesaid found, it shall seem to the court here, that the said *James*, by reason of his tenure, be chargeable to repair the said messuage or dwelling-house, and the foundation thereof, then they the said jurors say upon their oath aforesaid, that the said *James Watson* is guilty of the premises in the indictment within written within specified, in manner and form as by that indictment for the said lady the queen is within alledged: but if upon the whole matter aforesaid, by the jurors aforesaid in form aforesaid found, it shall seem to the court here that the said

said *James*, by reason of his tenure, is not chargeable to repair the messuage or dwelling-house aforesaid, nor the foundation thereof, then the same jurors say upon their oath aforesaid; that the said *James Watson* is not guilty of the premises in the same indictment within specified, in manner and form as the same *James* within in pleading for himself hath alledged, &c.

Judgment against the defendant.

The Queen against Burneby. 2 Ld. Raym.
900.

A Conviction by Justices of the Peace for cutting down Trees, grounded on the Statute of the 43d Year of Eliz. cap. 7.

County of *Huntingdon*, fl. **W**HEREAS complaint hath been made unto us, whose names are hereunto subscribed, justices of the peace for the said county of *Huntingdon*, on the day of the date hereof, by Sir *Robert Bernard*, bart. against *Robert Burneby* of *Brampton* in the said county of *Huntingdon*, gentleman, and *John Sandy* of the same town, labourer, for the unlawful cutting down and spoiling of divers lime-trees of the said Sir *Robert Bernard*, in the night-time of the 23d day of *August* last past, (the said lime-trees being then growing on the ground of the said Sir *Robert Bernard* in *Brampton* aforesaid); and whereas it appears unto us the said justices of the peace, by the testimony of *Mary Prior* of *Brampton* aforesaid, widow, being duly sworn and examined by us, according to the statute made in the three and fortieth year of the reign of the late queen *Elizabeth*, intituled, an Act to avoid and prevent divers misdemeanors in lewd and idle persons, That the said *Robert Burneby* and *John Sandy* did cut down and spoil the said lime-trees in the night-time of the day aforesaid; and having heard the said *Robert Burneby* and *John Sandy* (being this day brought before us to answer the said offence) and also having heard and examined divers witnesses upon oath, produced by the said *Robert Burneby* and *John Sandy* in their defence, we the said justices of the peace, upon hearing what could be alledged and proved on either side, have adjudged and convicted, and do hereby adjudge and convict the said *Robert Burneby* and *John Sandy* to be guilty of the offence aforesaid, for cutting down and spoiling the said lime-trees, and according to the power and authority given by

by the said act, we the said justices have ordered and appointed, and do hereby order and appoint that the said *Robert Burneby* and *John Sandy* do on or upon the 22d day of this instant month of *October* give and pay unto the said Sir *Robert Bernard* 20 l. of lawful *English* money, for recompence and full satisfaction for his damages by him sustained by reason of the cutting down and spoiling of the said lime-trees; and in default of payment thereof, to be further proceeded against according to the direction of the said statute. Given under our hands and seals the 7th day of *October* in the 13th year of the reign of our sovereign lord *William* the third, by the Grace of God, of *England, Scotland, France and Ireland*, king, defender of the faith, &c. annoq; Domini 1701.

Signed and sealed by *John Pocklington*, esq; *John Bagg*, esq; *William Naylor*, esq; *John Knighton*, doctor in divinity, *Robert Blemell*, clerk, and *James Torkington*, esq; six of his majesty's justices of the peace for the county of *Huntington*.

The King against Nash. 2 Ld. Raym. 989,

The Record of a Conviction for aiding and assisting in Deer-stealing.

Suffex, BE it remembered, that on the 20th day of (to wit) *August* in the 13th year of the reign of our sovereign lord *William* the third, now king of *England, &c.* at the parish of *Boxgrove* in the county of *Suffex* aforesaid, *William Mant* of the said parish of *Boxgrove*, husbandman, in his proper person came before us *John Miller*, esq; and *William Westbrook*, esq; justices of the said lord the now king, assigned to keep the peace in the county of *Suffex* aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, and gave information to us the aforesaid justices, that *Edward Rolfe* of *South Barstead* in the county aforesaid, husbandman, and another person to the said *William Mant* unknown, in the month of *April*, to wit, on the 11th day of the said month in the abovesaid 13th year of the reign of the said lord the now king, in the night of the same day and within the space of twelve months next before the said information made before us, five fallow deer in the park of the then *William Morley*, knight of the bath, now deceased, called *Halnaker Park*, (the same park lying and being in the said parish of *Boxgrove*, and being a park and soil where fallow deer

deer now are, and on the said 11th day of *April* in the 13th year above said, and for the space of forty years and more have been usually kept) with force and arms, &c. with certain dogs unlawfully and unjustly chased; and killed five fallow deer of the said *William Morley* in the said park then being, and one of those deer so killed, carried away, without the consent of the said *William Morley*, (then being the proprietor of the said park, and of the said several deer here mentioned to be killed,) or of any other person specially intrusted with the keeping of the said park, and the deer in the same park, or of any of them, at the time of the killing of those deer, or at any other time hitherto, to wit, at the parish of *Boxgrove* aforesaid in the county aforesaid, and that *Thomas Nash* of the parish of *Walberton* in the county aforesaid, gentleman, in the said month of *April* in the above said 11th year of the reign of the said lord the now king, to wit, on the 11th day of the same month at the parish of *Boxgrove* aforesaid, with force and arms, &c. was unlawfully and unjustly aiding and assisting the said *Edward Rolfe*, and the said other person, to the said *William Mant* unknown, in the unlawful and unjust chasing and killing of the said five fallow deer, that is to say, in persuading and enticing the said *Edward Rolfe*, and the other person unknown, to chase and kill the same deer in the said park at the said parish of *Boxgrove*, and by then and there lending certain dogs of him the said *Thomas Nash* to the said *Edward Rolfe* and the other person, for the chasing and killing of those deer, being the same dogs which killed those deer, and in then and there lending the horse of him the said *Thomas Nash* to the said *Edward Rolfe* and the other person to carry away the deer which they then and there killed with those dogs, contrary to the form of the statute in such case lately made and provided. And afterwards, to wit, on the 28th day of the said month of *August* in the above said 13th year of the reign of the said lord the now king at *Arundell* in the county of *Sussex* aforesaid, one *Robert Haynes* of *Walberton* in the county of *Sussex* aforesaid, husbandman, being a credible witness, in his proper person comes before us the said justices, and now makes his corporal oath upon the Holy Evangelists of God to speak the truth of and concerning the premises in the information aforesaid specified, before us the said justices, (having sufficient power and authority to administer the said oath to the said *Robert Haynes* in this behalf); and the said *Robert Haynes* being sworn as aforesaid upon his oath aforesaid now saith, deposeth and sweareth, that *Edward Rolfe* of *Southerstead* in the county aforesaid, husbandman, in the information aforesaid named, and he the said *Robert Haynes* in
the

the month of *April*, to wit, on the 11th day of the same month in the abovesaid 13th year of the reign of the said lord the now king, with force and arms, &c. with certain dogs entered into the park of the then *William Morley*, knight of the bath, in the information aforesaid mentioned called *Halnaker Park*, situate, lying and being in the parish of *Boxgrove* in the county of *Suffex* aforesaid, (being a park and soil where fallow deer then, and for the space of forty years then next before past, were usually kept) and five fallow deer of the said *William Morley* in the same park then being, then and there with those dogs chased and killed, and carried away one deer of the said five deer so killed as aforesaid: and the same *Robert Haynes* upon his said oath further saith, deposeth and sweareth, that *Thomas Nash* of the parish of *Walberton* in the county of *Suffex* aforesaid, gentleman, in the information aforesaid named, in the said month of *April*, to wit, on the 11th day of the same month in the abovesaid 13th year of the reign of the said lord the now king, incited them the said *Edward Rolfe*, and *Robert Haynes* to chase and kill the said five fallow deer in the park aforesaid, at the parish of *Boxgrove* aforesaid, and then and there did lend three greyhounds of him the said *Thomas Nash* to them the said *Edward Rolfe* and *Robert Haynes*, for the chasing and killing of the said fallow deer of the said *William Morley*, in his said park, at the said parish of *Boxgrove* in the county aforesaid, and afterwards received from them the said *Edward Rolfe* and *Robert Haynes*, and disposed of to his own use, one deer of the said five deer so killed with the dogs of him the said *Thomas Nash*, as aforesaid, in the said park of the said then *William Morley*, in the information aforesaid specified: whereupon the said *Thomas Nash*, after a summons to him thereupon first in that behalf now duly made, on the same 28th day of *August* in the abovesaid 13th year of the reign of the said lord the now king, at *Arundell* aforesaid in the county aforesaid, by reason of the information aforesaid appeared in his proper person before us the said *John Miller* and *William Westbrook*, then justices of the said lord the king, assigned to keep the peace in the county of *Suffex* aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county. And the said information and the evidence thereupon being heard and fully understood by him the said *Thomas Nash*, he the said *Thomas Nash* is asked by us the said justices, if he hath or knoweth any thing to say for himself, why he the said *Thomas Nash* should not be convicted of the premisses aforesaid above laid to his charge in form aforesaid: and because (we having heard and fully understood

understood all and every thing-alledged by him the said *Thomas Nash* in his defence of and concerning the premisses) it manifestly appears to us the said justices that the said *Thomas Nash* is guilty of the premisses aforesaid, in the said information laid to his charge, in manner and form as in the said information above in that behalf is alledged: therefore it is considered by us the said justices, that the said *Thomas Nash*, by testimony of the said *Robert Haynes*, a credible witness, upon his said oath before us the said justices made as aforesaid, is convicted of the premisses above laid to his charge, as set forth by the said information, according to the form of the statute in such case made and provided. In witness whereof we the said *John Miller* and *William Westbrooke*, the justices aforesaid, have set our hands and seals to this record, at *Arundell* aforesaid, the said 28th day of *August* in the above said 13th year of the reign of the lord the king that now is.

John Miller.
William Westbrooke.

Pleas before our Sovereign Lady the Queen at Westminster of the Term of St. Michael in the second Year of the Reign of Lady Ann, Queen of England, &c. Roll 364.

Nutt against Mills. 2 Ld. Raym. 1014.

London, **B**E it remembered, that on *Saturday* next after (to wit) **B** three weeks of Saint *Michael* in this same term, before our lady the queen at *Westminster* came *John Nutt* by *George Allgood* his attorney, and brought here into the court of the said lady the queen then there his certain bill against *Henry Mills*, one of the clerks of *Rowland Holt* esq; and *Robert Coleman* gentleman, chief clerks of the lady the queen, assigned to inroll pleas in the court of her the said lady the queen before the queen herself, present here in court in his proper person, otherwise called *Henry Mills* of the *Inner Temple London* gentleman, of a plea of debt; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *London*, (to wit) *John Nutt* complains of *Henry Mills*, one of the clerks of *Rowland Holt*, esq; and *Robert Coleman*, gentleman, chief clerks of the lady the queen, assigned to inroll pleas in the court of her the said lady the queen before the queen herself,

Bill against
clerk of the
king's bench.

In debt on a
bond.

self, present here in court in his proper person, otherwise called *Henry Mills* of the *Inner Temple, London*, gentleman, of a plea that he render to him sixty pounds of lawful money of *England*, which he owes to him, and unjustly detains, for that, to wit, That whereas the aforesaid *Henry* on the 28th day of *June* in the second year of the reign of our lady *Ann*, now queen of *England, &c.* at *London* aforesaid, to wit, in the parish of *Saint Mary Le Bow* in the ward of *Cheape*, by his certain writing obligatory, sealed with the seal of him the said *Henry*, and now here shewn to the court of the said lady the now queen, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *John* in the said 60*l.* to be paid to the said *John*, when he should be thereunto afterwards requested: nevertheless the said *Henry*, although often requested, &c. the said 60*l.* to the said *John* hath not yet paid, but to pay the same to him, hath hitherto absolutely denied, and yet doth deny, to the damage of the said *John* of ten pounds: and thereupon he brings suit, &c.

Oyer of the
bond.

And the said *Henry Mills*, present here in court in his proper person, defends the force and injury, &c. and prays oyer of the said writing obligatory, and it is read to him, &c. he also prays oyer of the condition of the same writing, and it is read to him in these words, that is to say, The condition of this obligation is such, that if the above-bounden *Henry Mills*, his heirs, executors or administrators, do well and truly pay or cause to be paid unto the above-named *John Nutt*, his executors, administrators or assigns, the full sum of 30*l.* of good and lawful money of *England*, together with the interest thereof after the rate of 6*l.* per centum per annum, at or upon the twelfth day of *July* next ensuing the date hereof, then this obligation to be void, or else to remain in full force and virtue; which being read and heard, he the said *Henry* prays judgment of the bill aforesaid, because he saith, that the said *John*, to wit, on *Friday* the 22d day of *October* in the aforesaid second year of the reign of the said lady the now queen, of *England, &c.* took upon himself the order of knighthood, and now is a knight; and this he is ready to verify: wherefore he prays judgment of the bill aforesaid, and that the said bill may be quashed, &c.

Plea, that the
plaintiff is a
knight, in a-
batement.

Demurrer.

And the said *John* saith, that by any thing by the said *Henry* above in pleading alledged, the bill of him the said *John* ought not to be quashed, because he saith, that the plea aforesaid by the said *Henry* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to quash the said bill of him the said

John

John against the said *Henry*; to which said bill the said *John* hath no necessity, neither is he bound by the law of the land in any manner to answer; and that he is ready to verify: wherefore for want of a sufficient answer in this behalf, he the said *John* prays judgment, and that the bill of him the said *John* may be adjudged good, and that the said *Henry* may answer to the said bill, &c.

And the said *Henry* saith, that the plea aforesaid by him the said *Henry* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to quash the bill of him the said *John* against the said *Henry*; which said plea, and the matter therein contained, he the said *Henry* is ready to verify and prove, as the court, &c. And because the said *John* hath not answered to that plea, nor hath hitherto in any manner denied it, he the said *Henry* as before prays judgment, and that the said bill may be quashed, &c. But because the court of the said lady the queen now here is not yet advised to give their judgment of and concerning the premisses, day is thereupon given to the parties aforesaid before the lady the queen at *Westminster* until next after to hear their judgment of and concerning the premisses, for that the court of the said lady the queen now here is not yet, &c.

Joinder in demurrer.

Respondent Ouster.

Pleas before our Sovereign Lady the Queen at Westminster of the Term of Saint Hilary in the first Year of the Reign of the Lady Ann, now Queen of England, &c. Roll 560.

Lysney against Selby. 2 Ld. Raym. 1118.

Middlesex, BE it remembered, that heretofore, that is to say, (to wit) *B* in the term of Saint *Michael* last past before the lady the queen at *Westminster* came *Mary Lysney*, widow, by *John Compton* her attorney, and brought here into the court of the said lady the queen then there her certain bill against *Gerrard Selby* in custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *Middlesex*, to wit, *Mary Lysney*, widow, complains of *Gerrard Selby*, in custody of the marshal of the *Marshalsea* of the lady the queen, being before the queen herself, for that, to wit, that whereas on the

Action on the case for a deceit,

the 2d day of *March* in the 14th year of the reign of the lord *William* the third, late king of *England*, &c. at the parish of *Saint John Wapping*, in the county aforesaid, a certain conversation was had and moved between the said *Gerrard* and her the said *Mary* of and concerning the purchasing of fourteen messuages, with the appurtenances, of him the said *Gerrard*, situate and lying in the parish of *Saint John Wapping* in the county aforesaid, by her the said *Mary* of the said *Gerrard*, to which or to the equity of redemption thereof he the said *Gerrard* then and there had a title, and of the remainder of a certain term of sixty-one years, commencing on the morrow of the feast of the annunciation of the blessed virgin *Mary*, which was in the year of our Lord 1683, then to come and unexpired: and upon the conversation aforesaid the said *Gerrard* then and there falsely, fraudulently and deceitfully asserted and affirmed to the said *Mary*, that the said 14 messuages, with the appurtenances, were then letten for the yearly rent of 68*l.* which said assertion and affirmation of the said *Gerrard* by him then and there so made, she the said *Mary* believing to be true, she the said *Mary* afterwards, to wit, the same day and year first aforesaid, at the parish aforesaid in the county aforesaid, bought of the said *Gerrard* the said 14 messuages, with the appurtenances, for a great sum of money, to wit, for five shillings to the said *Gerrard* by her the said *Mary* then and there in hand paid, and for 200*l.* from him the said *Gerrard* to her the said *Mary* then before owing, for money by her the said *Mary* to the said *Gerrard* then before lent; and thereupon the said *Gerrard*, by a certain indenture of assignment then and there made between the said *Gerrard* of the one part, and the said *Mary* of the other part, bargained, sold and assigned to the said *Mary* the said 14 messuages with the appurtenances, and the equity of redemption thereof, to hold to the said *Mary* and her assigns for the residue and remainder of the said term of 61 years then to come and unexpired, when in truth and in fact the said 14 messuages with the appurtenances, at the said time of the said assertion and affirmation of the said *Gerrard* as aforesaid made, and at the time of the buying and assignment thereof were letten for 52*l.* 10*s.* only, and no more, to wit, at the parish aforesaid in the county aforesaid: and so the said *Mary* saith, that the said *Gerrard* her the said *Mary* then and there falsely and fraudulently deceived and defrauded; whereupon she the said *Mary* saith, that she is injured, and hath damage to the value of 200*l.* and thereupon she brings suit, &c.

Defendant pleads, Not guilty.

Verdict for the Plaintiff. Damages 20*l.*

By

By Indictment, of Easter Term in the fourth Year of Queen Ann.

• The Queen against Smith. 2 Ld. Raym. 1144.

Middlesex. **H** Eretofore, that is to say, on the 8th day of *March* in the 4th year of the reign of our sovereign lady *Ann*, by the grace of God, of *England, Scotland, France and Ireland* queen, defender of the faith, &c. before the said lady the queen at *Westminster*, the said lady the queen sent to the keepers of her peace, and to the justices assigned to keep the peace within the county of *Middlesex*, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, her writ close in these words, to wit, *Ann* by the grace of God, of *England, Scotland, France and Ireland* queen, defender of the faith, &c. to the keepers of our peace, and to our justices assigned to keep the peace within the county of *Middlesex*, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, and to every of them, greeting: because in the record and process, and also in the giving of judgment upon a certain indictment against *Dorothy Smith*, late of the parish of *Saint Clement Danes* in the county of *Middlesex*, widow, for certain trespasses and contempts against the form of the statute set forth against unlawful usury, whereof before you she hath been indicted, and is thereupon convicted by a certain jury of the county taken between us and the said *Dorothy*, as it is said, manifest error hath intervened, to the great damage of her the said *Dorothy*, as from her complaint we have received information: we willing in this behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to her the said *Dorothy*, command you, that if judgment thereupon be given, then that you do send the record and process aforesaid, with all things touching the same to us, under your seals, or the seal of one of you, distinctly and openly, and this writ; so that we may have them in fifteen days from *Easter* day, wheresoever we shall then be in *England*, that inspecting the record and process aforesaid, we may further do thereupon for correcting the error, that which of right and according to the law and custom of our realm of *England* shall be to be done. Witness ourself at *Westminster* the 8th day of *March* in the 4th year of our Reign.

Error upon an indictment for usury before the justices of *Middlesex*.

Barnes.

Vol. III.

D

By

By virtue of this writ to me and others directed, I send the record of conviction of the within named *Dorothy Smith*, whereof mention is made in this writ, with all things touching the same, annexed to this writ, before the lady the queen, as it is within commanded. The answer of *Wriothesley*, duke of *Bedford*, one of the justices within written.

Which said writ and record mentioned in the same were returned and certified as follows:

Middlesex, (to wit) **B**E it remembered, that at the general quarter-sessions of the peace of the lady the queen, holden for the county of *Middlesex* at *Hicks Hall* in *Saint John Street* in the county aforesaid, on *Friday* in the week next after the feast of the *Epiphany*, on wit, the twelfth day of *January* in the third year of the reign of our lady *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. before *James Mundy*, serjeant at law, *Ralf Bucknall*, *Francis Tyssen*, *Thomas Owen*, *Edmund Prideaux*, *Joseph Offley*, *John Herbert*, *Nicholas Woolstenholme*, *John Perry*, *Martin Ryder*, *Richard Woodward* and others, their fellows justices of the said lady the queen, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanours committed in the same county, by the oath of *William Rathbone*, *George Bishop*, *Laurence Crosse*, *William Smith*, *Peter Sparks*, *Robert Bending*, *William Smart*, *Edward Hicks*, *Anthony Fryer*, *John Farrer*, *John Sutton*, *Nicholas Meeter*, *Edward Davenport*, *Richard Hale*, *Jeremiah Mason*, *Thomas Derry*, *Thomas Ward*, *Peter Sharp*, *Moses Wilkinson*, *Robert Pitts*, *Nahum Crossley* and *Thomas Beanman*, honest and lawful men of the county aforesaid, then and there sworn and charged to inquire for the said lady the queen for the body of the county aforesaid, it is presented, that *Dorothy Smith*, late of the parish of *Saint Clement Danes* in the county of *Middlesex*, widow, on the 20th day of *August* in the third year of the reign of the lady *Ann*, by the grace of God, queen of *England*, &c. at the parish aforesaid in the county aforesaid, lent and advanced to one *Richard Jones* the sum of 5*l.* of lawful money of *England*, to be paid to the said *Dorothy* upon the 8th day of *January* from thence next following in the year aforesaid. And the same *Dorothy Smith* afterwards, to wit, on the said 8th day of *January* in the year above said, at the parish aforesaid in the county aforesaid, unjustly and corruptly received and had of the said *Richard Jones* for deferring and giving day of payment of the said sum of 5*l.* for the time aforesaid, twelve shillings

shillings and sixpence of lawful money of *England*; which said sum of 12*s.* 6*d.* by the said *Dorothy* so as aforesaid of the said *Richard* received and had for deferring and giving day of payment of the said sum of five pounds for the time aforesaid, exceedeth the sum of six pounds by the 100*l.* for one whole year, contrary to the form of the statute in such case made and provided, and against the peace of the said lady the now queen, her crown and dignity; wherefore the sheriff of the county of *Middlesex* is commanded, that he do not omit, &c. but that he cause the said *Dorothy Smith* to come to answer, &c. Upon which afterwards, to wit, at the same general quarter-sessions of the peace of the said lady the queen, held for the county aforesaid at *Hicks Hall* aforesaid in the county aforesaid, on the said *Friday* the 12th day of *January* in the third year of the reign of the said lady the queen abovesaid, before the said justices of the said lady the queen and others, their fellows aforesaid, cometh the said *Dorothy Smith* in her proper person, and having heard the indictment aforesaid, the same *Dorothy* saith, that she is not guilty thereof; and of this she puts herself upon the country: and *Simon Harcourt*, esq; clerk of the peace of the county aforesaid, who prosecutes for the said lady the queen in this behalf, likewise, &c. Therefore let a jury thereupon come before the justices of the said lady the queen, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, and who, &c. to recognize, &c. because, &c. the same day is given as well to the said *Simon Harcourt*, who prosecutes, &c. as to the said *Dorothy Smith*, here, &c. whereupon at the next general sessions of the peace, to wit, at the general sessions of the peace of the said lady the queen, holden for the county aforesaid at *Hicks Hall* aforesaid in *Saint John Street* aforesaid in the county aforesaid, to wit, on the 26th day of *February* in the 3d year of the reign of the said lady the queen abovesaid, before *Joseph Offley*, *John Herbert*, *John Bond*, *John Crossbie*, *Benjamin Hilton*, esquires, and others, their fellows, justices of the said lady the queen, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, come as well the said *Simon Harcourt*, who prosecutes, &c. as the said *Dorothy Smith*, in their proper persons; and the jurors of the jury impanelled by the said sheriff for this purpose, to wit, *Nathaniel Chandler*, *William Gunson*, *Robert Moore*, *William Giles*, *Robert Wheely*, *Edward Reynolds*, *Edward Hampsted*, *John Searle*, *William Ashman*, *Benjamin Mills*, *Richard Winch* and *William Weaver*, being called, come, who

Defendant
pleads not
guilty.

Verdict, defend-
ant is guilty.

Fine 15*l*.

Committed to
Prison.

Error assigned.

being chosen, tried and sworn to speak the truth of and concerning the premises aforesaid, say upon their oath, that the said *Dorothy Smith* is guilty of the premises aforesaid in the indictment aforesaid above specified, above laid to her charge in manner and form as by the indictment aforesaid is above supposed against her: whereupon all and singular the premises being seen and understood by the court here, it is considered by the court here, that the said *Dorothy Smith* do pay to the said lady the queen the sum of 15*l*. for her fine by the court here above laid upon her, according to the form of the statute in that case made and provided, for and by reason of the premises, whereof she the said *Dorothy Smith* as aforesaid is convicted, and that she the said *Dorothy Smith* be taken, &c. which said *Dorothy Smith* being present here in court, by the court aforesaid, is committed to the *New Prison* of the said lady the queen at *Clerkenwell* in the county aforesaid, there to remain until she shall pay the fine aforesaid, &c. And now to wit, on *Saturday* next after one month of *Easter* in this same term, before the said lady the queen at *Westminster* cometh the said *Dorothy Smith* in her proper person, who is committed to the marshal, &c. and she immediately saith, that in the record and process aforesaid, and also in the giving of the judgment aforesaid against her the said *Dorothy Smith*, there is manifest error in this, to wit, that the indictment aforesaid against her, and the matter in the same contained, are not sufficient in law to warrant the judgment against her now given, or to convict her of the trespass and offence aforesaid; therefore in that there is manifest error: there is also error in this, to wit, that where by the record aforesaid it appears that judgment upon the indictment aforesaid was given against her the said *Dorothy Smith* in form aforesaid, that judgment, by the law of this realm of *England*, ought to have been given for the same *Dorothy*, that she be thereof acquitted, and go thereupon without day: therefore in that there is manifest error. And the said *Dorothy* prays that the judgment aforesaid for the errors being in the record and process aforesaid may be reversed and annulled, and absolutely be had for nothing; and that she may be restored to the common law of this realm of *England*, and to all things which she hath lost upon the aforesaid occasion.

*Pleas before the Lady the Queen at Westminster of
Easter Term in the third Year of the Reign of the
Lady Ann, now Queen of England, &c.*

*The Queen against Best and others. 2 Ld. Raym.
1167.*

London, (to wit). **H** Eretofore, that is to say, on *Friday* the 14th day of *January*, in the 2d year of the reign of our lady *Ann*, by the grace of God, of *England, Scotland, France and Ireland* queen, defender of the faith, &c. at the general quarter-sessions of the peace of the lady the queen, holden for the city of *London*, at the *Guild-hall* of the said city, and within the same city, before *John Parsons* knight, mayor of the city of *London*, *Robert Clayton* knight, *William Pritchard* knight, *William Gore* knight, aldermen in the city aforesaid, and *Salathiel Lovel*, one of the serjeants at law of the said lady the queen, and recorder of the said city, and others their fellows justices, assigned to keep the peace in the city aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the same city, by the oath of twelve jurors, honest and lawful men of the city of *London* aforesaid, then and there being sworn and charged to inquire for the said lady the queen for the body of the city aforesaid, it was presented, that *Richard Best*, late of *London* yeoman, *Philip Jackson*, late of *London* yeoman, *Richard Grimes*, late of *London* yeoman, and *Elizabeth Church*, late of *London* spinster, otherwise called *Elizabeth Ellis*, late of *London* spinster, otherwise called *Elizabeth Carter*, late of *London* spinster, being persons of evil name, fame and dishonest conversation, and not endeavouring to seek their living by honest labour, according to the laws of this kingdom of *England*, but compassing, devising and conspiring among themselves by what unlawful means they might unlawfully and unjustly obtain and acquire into their hands and possession the goods, chattels and money of the honest liege men and subjects of the said lady the queen, to maintain their dishonest and diabolical courie of living, on the 18th day of *December* in the 2d year of the reign of our lady *Ann*, by the grace of God, of *England, Scotland, France and Ireland* queen, defender of the faith, &c. falsely, unlawfully, wickedly and craftily contriving, intending and conspiring and as-
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Indictment for
falsly charging
one with being
the father of a
bastard child.

vising among themselves to deceive and defraud one *Peter Pickering* the younger of *London* mercer, not only of his monies, but also to deprive him the said *Peter* of his good name, fame, estate and credit, and to bring the said *Peter* into the greatest hatred, scandal, contempt and infamy amongst all the liege men and subjects of the said lady the queen, on the 18th day of *December* in the 2d year aforesaid at *London* aforesaid in the parish of *Saint Vedast*, otherwise *Foster's*, in the ward of *Farringdon Within*, falsely, unlawfully, deceitfully, maliciously, and for the cause of wicked gain conspired, contrived, consulted and agreed among themselves falsely, unjustly, wickedly and diabolically to charge and accuse the said *Peter Pickering* to be the father of a child whereof the said *Elizabeth Ellis*, otherwise *Church*, otherwise *Carter*, was then pregnant, as they then and there pretended; and by the conspiracy among them so as aforesaid before had, then and there with force and arms, &c. they did falsely and maliciously affirm, and every one of them then and there did falsely and maliciously affirm, that he the said *Peter* then lately before had carnal knowledge of the body of her the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, and had carnally known the said *Elizabeth Ellis*, otherwise *Church*, otherwise *Carter*, and that he the said *Peter* was the father of the pretended child whereof the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, then was pregnant, as she asserted and pretended: and that for the further execution of the premises, they the said *Richard Best*, *Philip Jackson*, *Richard Grimes* and *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, then and there agreed and concluded amongst themselves, that he the said *Richard Best* should go to the said *Peter* and should falsely, wickedly, maliciously, and for the sake of wicked gain should charge and accuse him the said *Peter*, that he the said *Peter* then lately before had had carnal knowledge of the body of the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, and had carnally known her the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, and that he the said *Peter* was the father of the said pretended child whereof they pretended that she the said *Elizabeth* was pregnant. And the jurors aforesaid upon their oath aforesaid further say, that the said *Richard Best* in execution of the premises, and according to the said conspiracy, consultation and agreement among them the said *Richard Best*, *Philip Jackson*, *Richard Grimes* and *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, as aforesaid before had, afterwards, to wit, on the said 18th day of *December* in the 2d year aforesaid, at the parish and ward aforesaid, and at divers other places within the

the city aforesaid, with force and arms, &c. falsely, wickedly, maliciously, diabolically, and for the sake of wicked gain, in the hearing of many faithful liege men and subjects of the said lady the queen, charged and accused the said *Peter*, that he the said *Peter* then lately before had had carnal knowledge of the body of the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, and had carnally known her the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, and that he the said *Peter* was the father of the said pretended child whereof they affirmed the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, then was pregnant, to the great damage, scandal and defamation of the said *Peter Pickering* the younger, to the worst and most pernicious example of all others offending in the like case, and against the peace of the said lady the now queen, her crown and dignity; which said indictment the lady the now queen afterwards for certain causes hath caused to come to be determined before her: wherefore the sheriffs of *London* were commanded, that they should cause them to come to answer, &c. and now, to wit, on *Wednesday* next after five weeks of *Easter* in this same term before the lady the queen at *Westminster* come the aforesaid *William Best*, *Philip Jackson* and *Elizabeth Ellis*, by *Benedict Brown* their attorney, and having severally heard the indictment aforesaid, say, that they do not apprehend that the said lady the queen will or ought farther to impeach or occasion them the said *Richard*, *Philip* and *Elizabeth*, or any of them, for the premises, because they say, that the indictment aforesaid is not sufficient in law, to which they and each of them have no necessity, nor are they bound by the law of the land in any manner to answer: and for the insufficiency thereof they pray judgment; and that they may be dismissed by the court here concerning the premises, &c.

The indictment
removed into
B. R.

Defendants
demur.

And *Samuel Astry*, knt. coroner and attorney of the lady the queen, in the court of the said queen before the queen herself, who prosecutes for the said lady the queen in this behalf for the said lady the queen saith, that the indictment aforesaid, and the matter therein contained, are good and sufficient in law to compel them the said *Richard Best*, *Philip Jackson* and *Elizabeth Ellis* to answer the said indictment: wherefore for want of a sufficient answer in this behalf he prays judgment, and that they by the court here may be convicted of the premises, &c.

Joinder in
demurrer.

By

By Indictment, of the Term of Saint Hilary in the third Year of the Lady Ann, Queen of England, &c.

The Queen against the Inhabitants of Stretford.
2 Ld. Raym. 1169.

Error on an indictment for not repairing an highway.

Lancashire, **H** Eretofore, that is to say, on the 30th day (to wit) of *June* in the third year of the reign of the lady *Ann*, by the grace of God, queen of *England, Scotland, France and Ireland*, defender of the faith, &c. before the said lady the queen at *Westminster*, the said lady the queen sent to the great session of the county of *Lancaster*, and also to the keepers of her peace in the county aforesaid, and to her justices, assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, and to every of them, her writ close in these words, to wit, *Ann*, by the grace of God, of *England, Scotland, France and Ireland* queen, defender of the faith, &c. To the justices of the great session of the county of *Lancaster*, and also to the keepers of our peace in the county aforesaid, and to our justices assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, and to every of them, greeting: because in the record and process, and also in the giving of judgment of a certain indictment made before you, or some of you, against the men, inhabitants in *Stretford* in the county aforesaid, for certain trespasses, contempts and nuisances for not repairing and amending our highway within *Stretford* aforesaid, whereof they are indicted, and thereupon are convicted by a certain jury of the country thereupon taken between us and the aforesaid inhabitants, as it is said, manifest error hath intervened, to the great damage of the said inhabitants, as from their complaint we have received information: we willing that the error (if any there shall be) in due manner be corrected, and that full and speedy justice be done to the same inhabitants in this behalf, command you, if judgment thereupon be given, then that you send to us the record and process aforesaid, with all things touching the same, under your seals, or the seal of one of you, distinctly and openly, and this writ, so that we may have them from the day of Saint *Michael* in three weeks, wheresoever we shall then be in *England*, that inspecting the record and process

cells aforefaid, we may further do thereupon, for the correcting that error, that which of right, and according to the law and custom of our realm of *England*, fhall be to be done. Witnefs ourfelf at *Westminfter* the 30th day of *June* in the third year of our reign.

The execution of this writ appears in a certain fchedule to this writ annexed, *Chriftopher Dauntefey, Edward Cheffham*; which faid writ and record in the fame mentioned were returned and certified as follows:

Lancashire, **A**T the general quarter-feflion of the peace (to wit) of the faid lady the queen, holden at *Lancaster* in and for the county palatine of *Lancaster*, on *Tuesday*, to wit, the 13th day of *July* in the 2d year of the reign of the lady *Ann*, by the grace of God, of *England, Scotland, France and Ireland* queen, defender of the faith, &c. before *Edward Wilfon*, efq; *Charles Rigby*, efq; *William Buckley*, efq; and *Thomas Sheirfon*, efq; juftices of the faid lady the queen, affigned to keep the peace of the faid lady the queen in the county aforefaid, and alfo to hear and determine divers felonies, trespaffes, and other misdemeanors committed in the faid county. The fame general quarter-feflions of the peace is adjourned by the faid juftices of the faid lady the queen, being in the court, until *Thursday*, to wit, the 15th day of the fame month of *July*, to be holden at *Preflon* in *Amoundernes*, in and for the county aforefaid; at which faid feflion of the peace of the faid lady the queen, holden by adjournment aforefaid at *Preflon* in *Amoundernes* aforefaid, in and for the county aforefaid, on the faid *Thursday* the 15th day of *July* in the 2d year aforefaid, before *Richard Fleetwood*, efq; *William Farrington*, efq; *Richard Longworth*, efq; and *Thomas Fofter*, efq; juftices of the faid lady the queen, affigned to keep the peace in the county aforefaid, and alfo to hear and determine divers felonies, trespaffes, and other misdemeanors committed in the fame county. The faid feflion of the peace of the faid lady the queen is further adjourned by the fame juftices of the faid lady the queen laft mentioned, being in the court, until *Monday* the 19th day of the fame month of *July*, to be holden at *Ormeſkirke*, in and for the county aforefaid; at which faid feflion of the peace of the faid lady the queen, holden by that adjournment at *Ormeſkirke* aforefaid, in and for the faid county, on the faid *Monday*, to wit, the 19th day of *July* in the 2d year aforefaid, before the honourable *Charles Stanley*, efq; *Thomas Stanley*, bart. *Roger Bradſhaigh*, bart. *Richard Bold*, efq; *William Farrington*, efq; *Robert Mowdeſley*, efq; *Thomas Afhuſt*, efq; *Jonathan Blackburne*,

Quarter ſeffions
adjourned to
Preflon.

Adjourned to
Ormeſkirke.

Further ad-
journed to
Manchester.

burne, esq; and *Thomas Johnson*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county. That sessions of the peace is adjourned by the same justices of the said lady the queen last named, being in the court, until *Thursday*, to wit, the 22d day of the same month of *July*, to be holden at *Manchester*, in and for the county aforesaid: at which said session of the peace of the said lady the queen, holden by that adjournment at *Manchester* aforesaid, in and for the county aforesaid, on the said *Thursday* the 22d day of *July* in the 2d year abovesaid, before *George Birch*, esq; *Richard Entwistle*, esq; *Charles Hilton*, esq; and *Christopher Dauntsey*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the county aforesaid.

An inquisition is taken at *Manchester* aforesaid, in and for the county aforesaid, before the justices last named, on the said 22d day of *July* in the 2d year abovesaid, by the oath of *Daniel Gaskell* of *Clifton cum Pendlebury*, gent. *Thomas Moss* of *Manchester*, gent. *John Holme* of *Heaton Norris*, gent. *Jonathan Dawson* of *Manchester*, gent. *Robert Ravald* of *Broughton*, gent. *William Booth* of *Ryton*, gent. *John Booth* of the same, gent. *Michael Flitcraft* of *Manchester*, gent. *John Odcroft* of the same, gent. *John Rideing* of *Cetham*, gent. *Richard Hill* of *Hundersfield*, gent. *William Sharlock* of *Barton*, gent. *James Bradshaw* of the same, gent. *James Chadwick* of the same, gent. *John Gee* of the same, gent. *Edmund Smethurst* of *Radcliffe*, gent. and *William Hampson* of the same, gent. honest and lawful

The bill of in-
dictment found.

men of the county aforesaid, then and there sworn and charged to inquire for the said lady the queen and the body of the county aforesaid, who say, and present upon their oath, that the queen's highway within *Stretford* in the county of *Lancaster*, between the west end of a certain lane within *Urningston* in the county aforesaid, and a certain place called *Stretford Cross*, for the space of fifty rods, or thereabouts, leading between the village of *Flixton* in the county aforesaid, and the market-town of *Stockport* in the county of *Chester*, on the 11th day of *January* in the first year of the reign of the lady *Ann*, by the grace of God, of *England, Scotland, France and Ireland* queen, defender of the faith, &c. at *Stretford* aforesaid in the county of *Lancaster* aforesaid, was, and yet is very dirty and muddy, and so narrow, that the liege-men and subjects

of

of the said lady the queen, by, and through the said way, by themselves, or with their horses, oxen, carts and carriages, cannot go, return, pass, ride, and labour, without great peril of their lives and goods, to the common nuisance of all the liege-people and subjects of the said lady the queen, whom it concerns, to go, return, pass, ride, and labour, by, and through the said queen's highway, and against the peace of the said lady the queen, &c. And that the inhabitants of *Stretford* aforesaid, from time whereof the memory of man is not to the contrary, have used, and been accustomed, and ought to repair and amend the same way, as often as, and when need should be.

Afterwards, that is to say, at the general quarter-sessions of the peace of the lady the queen, holden at *Lancaster*, in and for the county palatine of *Lancaster* aforesaid, on *Tuesday*, to wit, the 11th day of *January* in the 2d year of the reign of the lady *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. before *Edward Wilson*, esq; *Thomas Sheirson*, esq; and *John Hodgson*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, that same general quarter-session of the peace is adjourned by the said justices of the said lady the queen until *Thursday*, to wit, the 13th day of the same month of *January*, to be holden at *Preston* in *Amounderness*, in and for the county aforesaid; at which said general quarter-session of the peace of the said lady the queen, holden by adjournment aforesaid at *Preston* in *Amounderness* aforesaid, in and for the county aforesaid, on the said *Thursday*, to wit, the 13th day of *January* in the 2d year aforesaid, before *Richard Fleetwood*, esq; *Thomas Rigby*, esq; *Edward Rigby*, esq; and *Richard Longworth*, esq; justices of the said lady the queen, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, the said general quarter-session of the peace of the lady the queen is further adjourned by the same justices of the said lady the queen last named until *Monday*, to wit, the 17th day of the same month of *January*, to be holden at *Wygan*, in and for the county aforesaid; at which said general quarter-session of the peace of the said lady the queen, holden by that adjournment at *Wygan* aforesaid in the county aforesaid on *Monday*, to wit, the 17th day of *January* in the 2d year aforesaid, before *Thomas Stanley*, bart. *William Farrington*, esq; *Thomas Ashurst*,

At a quarter session at Lancaster.

Adjourned to Preston.

Further adjourned to Wygan.

Further ad-
journed to
Manchester.

Two of the
inhabitants in
the name of all
plead not guilty.

Issue joined
upon *not guilty*.

Venue awarded.

Ashurst, esq; *Jonathan Blackburne*, esq; *Charles Hilton*, esq; and *Jonathan Case*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county. That general quarter-session of the peace of the said lady the queen is further adjourned by the same justices of the said lady the queen last named, until *Thursday*, to wit, the 20th day of the same month of *January*, to be holden at *Manchester*, in and for the county aforesaid; at which said general quarter-session of the peace of the said lady the queen holden by that adjournment at *Manchester* aforesaid, in and for the county aforesaid, on the said *Thursday* the 20th day of *January* in the 2d year aforesaid, before *James Holt*, esq; *Joshua Horton*, esq; *Richard Entwistle*, esq; *Charles Hilton*, esq; and *Christopher Dauntsey*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, *John Sherlock* and *Thomas Moss*, two of the inhabitants of the town of *Stretford* aforesaid, in the name of all the inhabitants of the same town, come and complain that they, by colour of the premisses in the indictment aforesaid specified, are greatly vexed and disquieted, and in this unjustly, because they protest that the indictment aforesaid, and the matter in the same contained, are not sufficient in law, to which they have no necessity, neither are they bound by the law of the land to answer: nevertheless for plea they say, that the inhabitants of *Stretford* aforesaid are not guilty of the premisses laid to their charge; and of this they put themselves upon the country; and *Nicholas Starkey*, esq; attorney general of the said lady the queen of her county palatine of *Lancaster* aforesaid, who prosecutes for the said lady the queen in this behalf likewise: whereupon the sheriff of the county aforesaid is commanded, that he do not omit, because of any liberty of his county aforesaid, but that he cause to come before the justices of the said lady the queen, at the general quarter-session of the peace of the said lady the queen, after the feast of *Easter* next coming, to be holden at *Manchester* aforesaid, twelve, &c. by whom, &c. to recognize, &c. because as well, &c. The same day is given as well to the said *Nicholas Starkey*, esq; who prosecutes, &c. as to the said *John Sherlock* and *Thomas Moss*, two of the inhabitants of *Stretford* aforesaid, in the name of all the inhabitants of the said

said town; at which said general quarter-session of the peace, to wit, at the general quarter-session of the peace of the lady the queen, holden at *Lancaster*, in and for the county palatine of *Lancaster* aforesaid, on *Tuesday*, to wit, the 25th day of *April* in the third year of the reign of the lady *Ann*, by the grace of God, of *England, Scotland, France* and *Ireland* queen, defender of the faith, &c. before *Roger Kirby*, esq; *Edward Wilson*, esq; *Thomas Sheirson*, esq; *John Hodgson*, esq; and *William Buckley*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, that same general quarter-session of the peace of the said lady the queen is adjourned by the said justices of the said lady the queen until *Thursday*, to wit, the 27th day of the same month of *April*, to be holden at *Preston* in *Amounderness*, in and for the county aforesaid; at which said general-session of the peace of the said lady the queen, held by adjournment aforesaid at *Preston* in *Amounderness* aforesaid, in and for the county aforesaid on the said *Thursday*, to wit, the 27th day of *April* in the 3d year above said, before *Richard Fleetwood*, esq; *William Farrington*, esq; *Thomas Rigby*, esq; *Richard Longworth*, esq; and *Thomas Foster*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, the said general quarter session of the peace of the said lady the queen is further adjourned by the same justices of the said lady the queen last named, until *Monday*, to wit, the first day of *May* in the third year above said, to be holden at *Ormeskirke*, in and for the county aforesaid; at which said session of the peace of the said lady the queen, holden by that adjournment at *Ormeskirke* aforesaid, in and for the county aforesaid, on the said *Monday*, to wit, the first day of *May* in the third year above said, before *Thomas Stanley*, bart. *William Farrington*, esq; *Thomas Ashurst*, esq; *Jonathan Blackburne*, esq; and *Jonathan Case*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county. That general quarter-session of the peace of the said lady the queen is further adjourned by the same justices of the said lady the queen last named, until *Thursday*, to wit, the 4th day of *May* in the third year above said, to be holden at *Manchester*, in

Lancaster session.

Adjourned to *Preston*.

Further adjourned unto *Ormeskirke*.

Further adjourned to *Manchester*.

Some of the
jury sworn.

Tales.

in and for the county aforesaid; at which said general quarter-session of the peace of the said lady the queen, holden by that adjournment at *Manchester* aforesaid, in and for the county aforesaid on *Thursday* the 4th day of *May* in the third year above said, before *Ralph Asheton*, bart. *Peter Egerton*, esq; *Richard Entwistle*, esq; *Christopher Dauntsey*, esq; and *Charles Hilton*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, come as well the said *Nicholas Starkey*, esq; who prosecutes for the said lady the queen in this behalf, as the said *John Sherlock* and *Thomas Moss*, two of the inhabitants of *Stretford* aforesaid, in the name of all the inhabitants of the same town, in their proper persons; and the jurors by the sheriff aforesaid being called and impanelled for this purpose, certain of them, to wit, *Peter Locker* of *Westboughton* in the county of *Lancaster* aforesaid, gent. *Robert Lee* of the same, gent. *Samuel Gooden* of *Heaton Norres* in the county aforesaid, gent. *Richard Clegg* of *Spotland* in the county aforesaid, gent. *John Buckley* of *Tottington* in the county aforesaid, gent. *James Hogkinson* of *Ampull* in the county aforesaid, gent. *Edmund Cooper* of *Middleton* in the county aforesaid, gent. came and are sworn upon the jury: and because the rest of the jurors of the jury did not appear, therefore others of the by-standers, by the sheriff of the county aforesaid being chosen, at the request of the said *Nicholas Starkey*, esq; attorney-general of the said lady the queen, and by the command of the justices, are newly appointed, whose names are affixed in the panel within written, according to the form of the statute in such case made and provided; which said jurors so newly appointed, to wit, *Samuel Wareing* of *Bury* in the county aforesaid, gent. *Robert Jephson* of *Ardwicke* in the county aforesaid, gent. *John Bolton* of *Tong* in the county aforesaid, gent. *William Smethurst* of *Prestwich* in the county aforesaid, gent. and *Robert Woolfencroft* of *Falsworth* in the county aforesaid, gent. likewise come, and are sworn upon the jury with the jurors aforesaid impanelled: whereupon publick proclamation being made here in court for the said lady the queen, as the custom is, that if there was any one who would inform the said justices of the lady the queen, the queen's serjeant at law, the queen's now attorney general, or the jurors sworn aforesaid, he might come forth, and he should be heard: and hereupon it is proceeded to the taking of the jury aforesaid, as well by the jurors aforesaid first impanelled and sworn, as by the

other jurors aforesaid now appearing, who being chosen, tried and sworn to speak the truth concerning the premisses, together with the other jurors aforesaid before impanelled and sworn, say upon their oath, that the said inhabitants of *Stretford* aforesaid are guilty of the premisses, in manner and form as by the indictment aforesaid for the said lady the now queen is above supposed against them: whereupon all and singular the premisses being seen and understood by the court here, it is considered by the court, that the said inhabitants of *Stretford* aforesaid do forfeit to the said lady the queen, by occasion of the nuisance aforesaid in not repairing the queen's highway aforesaid, the sum of forty pounds. And afterwards, for certain causes the said justices specially moving, it is ordered, that the execution of that judgment be respited until the seventh day of *July* next coming, &c. And now, to wit, on *Wednesday* next after fifteen days of *Easter* in this same term, before the said lady the queen at *Westminster*, come the said *John Sherlock* and *Thomas Moss*, two of the inhabitants of *Stretford* aforesaid, in the name of all the inhabitants of the same town, by *Francis Pember* their attorney, and say, that in the record and process, and also in the giving of judgment against the inhabitants of *Stretford* aforesaid, there is manifest error, in *this*, to wit, that the indictment aforesaid, and the matter in the same contained, are not sufficient in law to warrant the judgment now given against them, or to convict them of the trespass, contempt and offence aforesaid; therefore in *that* there is manifest error: there is also error in *this*, to wit, that where by the record aforesaid it appears that judgment upon the indictment aforesaid was given against the inhabitants of *Stretford* aforesaid in form aforesaid, that judgment by the law of the land of this realm of *England* ought to be given for the said inhabitants, that they should be acquitted thereof, and go thereupon without day: therefore in *that* there is manifest error. And the said *John Sherlock* and *Thomas Moss*, two of the inhabitants of *Stretford* aforesaid, in the name of all the inhabitants of the same town, pray that the judgment aforesaid for these errors, and others, being in the record aforesaid, may be reversed, annulled, and wholly had for nothing; and that they may be restored to the common law of this realm of *England*, and to all things which they have lost by the occasion aforesaid.

Verdict against the defendants.

Judgment.

Fine 40*l*.

Error assigned.

By Indictment, of Easter Term, in the third Year of the Reign of the Lady Ann, Queen of England, &c.

The Queen against Sainthill. 2 Ld. Raym. 1174.

Error on an indictment for not repairing a bridge *ratione temeræ.*

THE lady the queen hath sent to the keepers of her peace in the county of *Devon*, and to her justices, assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, and to every of them, her writ-close in these words, to wit, *Ann*, by the grace of God, of *England, Scotland, France and Ireland* queen, defender of the faith, &c. To the keepers of our peace in the county of *Devon*, and to our justices assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, and to every of them, greeting: because in the record and process, and also in the giving of judgment against *Samuel Sainthill*, for certain trespasses, contempts and nuisances, whereof the same *Samuel* is indicted before you, and thereupon is convicted by a certain jury of the country thereupon taken between us and the said *Samuel*, as it is said, manifest error hath intervened, to the great damage of him the said *Samuel*, as from his complaint we have received information: we willing that the error, if any there shall be, in due manner be corrected; and that full and speedy justice be done to the said *Samuel* in this behalf, command you, if judgment be thereupon given, then that you send to us the record and process aforesaid, with all things touching the same, under your seals, or the seal of one of you, distinctly and openly, and this writ, so that we may have them on the octave of Saint *Hilary*, wheresoever we shall then be in *England*, that inspecting the record and process aforesaid, we may further do thereupon, for correcting that error, that which of right, and according to the law and custom of our realm of *England*, shall be to be done. Witness ourself at *Westminster* the 19th day of *November* in the 2d year of our reign.

Which said writ, and the record in the same mentioned, were returned and certified as follows, to wit, The record and process of conviction, whereof mention is within made, with all things touching the same, we send before the lady the queen, wheresoever, &c. at the day within mentioned,

in a certain record to this writ annexed, as it is within commanded. The answer of two of the justices within written, *Thomas Putt*; *Nicholas Martyn*.

Devonshire, **BE** it remembered, that at the general quarter-session of the peace of the lady the now queen, holden at the castle of *Exeter*, in and for the said county of *Devon*, on the 6th day of *April* in the 2d year of the reign of the lady *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. before *Thomas Putt*, bart. *Nicholas Martyn*, esq; and *Richard Reynell*, esq; and others their fellows, justices of the said lady the queen, assigned to keep the peace in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, by the oath of *John Bridge*, gent. *John Bawdon*, gent. *Thomas Clarke*, gent. *Robert Stone*, gent. *George Gibbs*, gent. *John Seward*, gent. *Francis Searle*, gent. *Thomas Pearse*, gent. *John Northcott*, gent. *William Tickle*, gent. *John Whittey*, gent. *Thomas Sowdon*, gent. *William Elliot*, gent. *Edward Browne*, gent. *Philip Osmond*, gent. and *Thomas Limbrey*, gent. honest and lawful men of the county aforesaid, then and there returned, tried, sworn and charged to inquire for the said lady the queen, and the body of the county aforesaid, it is presented in manner and form following, to wit, *Devonshire*, to wit, The jurors for the lady the queen upon their oath present, that *Samuel Sainthill* of *Bradmuch* in the county of *Devon* aforesaid, esq; on the first day of *April* in the 2d year of the reign of our lady *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. and at divers other days and times, as well before as afterwards, with force and arms, &c. at *Bradmuch* aforesaid in the county aforesaid, suffered the West part or end of a certain common footbridge, commonly called *Longbridge*, situate upon the river of *Culme*, in a certain common footway there, leading from the town of *Bradmuch* aforesaid, towards, and unto the town of *Honiton* in the same county, and containing in itself half of the same bridge, to be so ruinous, broken and in decay, for want of reparation and amendment of the same part or end, so that by reason thereof, the liege-people and subjects of the said lady the queen cannot go, pass over, or labour, in, and upon the said bridge, as they ought, and used to do, without great danger, to the great damage and common nuisance of the same subjects and liege-people, and against the peace of the said lady the now queen, her crown and dignity. And they further present, that the said *Samuel*

The indictment found.

Defendant
pleads Not
guilty.

Issue joined.

Sainthill, by reason of his tenure of certain lands within the parish of *Bradinch* aforesaid, commonly called *Oxenford*, lying near to the same bridge, ought and used to repair and amend the said part or end of that bridge as often as there hath been need: whereupon it is commanded by the same court to the sheriff of the county aforesaid, that he do not omit, &c. but that he cause the said *Samuel Sainthill* to come to answer, &c. Whereupon afterwards, that is to say, at the general quarter-sessions of the peace of the said lady the queen, holden at the castle of *Exeter*, in and for the county of *Devon* aforesaid, on the 13th day of *July* in the 2d year of the reign of the said lady the now queen, before *Thomas Putt*, bart. *Nicholas Martyn*, esq; and *Richard Reynell*, esq; and others their fellows justices of the said lady the queen, assigned to keep the peace in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the county aforesaid, cometh the said *Samuel Sainthill* in his proper person, and having heard the indictment aforesaid, the said *Samuel* saith, that he is not guilty thereof; and of this he puts himself upon the country; and *William Martyn*, esq; then and there clerk of the peace of the county aforesaid, who prosecutes for the said lady the queen in this behalf likewise: therefore let a jury come before the justices of the said lady the queen, assigned to keep the peace in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, at the general quarter-session of the peace of the said lady the queen, to be holden at the castle of *Exeter*, in and for the county of *Devon* aforesaid, on *Tuesday* next after the feast of *Saint Michael* the archangel then next coming, who neither, &c. to recognize, &c. because as well, &c. The same day is given as well to the said *William Martyn*, who prosecutes, &c. as to the said *Samuel Sainthill*: at which said general quarter-session of the peace of the said lady the queen, holden at the castle of *Exeter*, in and for the county of *Devon* aforesaid, on *Tuesday* next after the feast of *Saint Michael* the archangel, in the 2d year of the reign of the said lady the now queen aforesaid, before *Thomas Putt*, bart. *Nicholas Martyn*, esq; and *Richard Reynell*, esq; and others their fellows, justices of the said lady the queen, assigned to keep the peace in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, come as well the said *William Martyn*, who prosecutes, &c. in his proper person, as the said *Samuel Sainthill* in his proper person; and the jurors of the jury aforesaid, by *George Parker*, esq;

esq; then sheriff of the county aforesaid, to this being impanelled, returned and called, to wit, *John Kingdome, Thomas Collyer, Sydrach Easkervill, William Barne, John Mountstephen, Arthur Steevens, Ambrose Bence, Francis Dennis, Nicholas Markell, Stephen Lang, William Bidgood and George Perry*, honest and lawful men of the county aforesaid, likewise come, who being chosen, tried and sworn to speak the truth concerning the premises, say upon their oath, that the said *Samuel Sainthill* is guilty of the trespass and contempt aforesaid in the said indictment above laid to his charge: therefore it is considered by the same court, that the said *Samuel Sainthill* be taken to satisfy to the said lady the queen of his fine by occasion of the trespass and contempt aforesaid: and the said *Samuell Sainthill* then and there prayed that he might be admitted to a fine with the said lady the queen, by the occasion aforesaid; and thereof puts himself in the mercy of the said lady the queen, and the fine of the said *Samuel* is assessed by the justices aforesaid to ten pounds. And the sheriff of the county aforesaid is commanded by the said justices that he do not omit, &c. but that he distrain the said *Samuel Sainthill* by all his lands, &c. and that of the issues, &c. so that he do repair and amend the said West part or end of the said bridge at his own proper expences, costs and charges, if it be not before repaired and amended by him the said *Samuel*; and in what manner, &c. And now, to wit, on *Wednesday* next after fifteen days of *Easter* in this same term, before the lady the queen at *Westminster*, cometh the said *Samuel Sainthill* in his proper person, and saith, that in the record and process aforesaid, and also in the giving of the judgment aforesaid against him the said *Samuel Sainthill*, there is manifest error, in this, to wit, that the indictment aforesaid against him the said *Samuel Sainthill*, and the matter in the same contained, are not sufficient in law to warrant the judgment against him the said *Samuel Sainthill* now given, or to convict him of the trespass, contempt and offence aforesaid; therefore in that there is manifest error: there is also error in this, to wit, that where by the record aforesaid it appears that judgment upon the said indictment was given against him the said *Samuel Sainthill* in form aforesaid, that judgment by the law of the land of this realm of *England* ought to be given for the same *Samuel Sainthill*, to wit, that he be thereof acquitted, and go thereupon without day: therefore in that there is also manifest error. And the said *Samuel Sainthill* prays that the judgment aforesaid for these errors, and others, being in the record aforesaid, may be reversed and annulled, and wholly had for nothing; and that he may

Verdict guilty.

Fined 10*l*.

Error assigned.

be restored to the common law of this realm of *England*, and to all things which he hath lost by occasion of the judgment aforesaid.

Pleas before our Lady the Queen at Westminster of the Term of the Holy Trinity in the fourth Year of the Reign of Ann, Queen of England, &c.

Bond against Barnes. *2 Ld. Raym. 1205.

London, BE it remembered, that heretofore, to wit, in (to wit) **B** the term of *Easter* last past, before the lady the queen at *Westminster* came *William Bond* by *William Smith* his attorney, and brought here into the court of the said lady the queen then there his certain bill against *Edward Barnes*, in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *London*, to wit, *William Bond* complains of *Edward Barnes*, in the custody of the marshal of the *Marshe* of the lady the queen, being before the queen herself, for that, (to wit) That whereas the said *Edward* on the 2d day of *April* in the 4th year of the reign of the lady *Ann*, now queen of *England*, &c. at *London* aforesaid, to wit, in the parish of the *Blessed Mary of the Arches* in the ward of *Cheape*, was indebted to the said *William Bond* in one hundred pounds of lawful money of *England*, for the like sum of money of him the said *William*, by him the said *William*, at the special instance and request of him the said *Edward*, to him the said *Edward* before that time lent and advanced; and being thereof so indebted, he the said *Edward*, in consideration thereof afterwards, to wit, the same day and year above said, at *London* aforesaid, in the parish and ward aforesaid, assumed upon himself, and to the said *William Bond* then and there faithfully promised, that he the said *Edward* the said one hundred pounds to the same *William*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy. And also whereas afterwards, to wit, the same day and year last above said, at *London* aforesaid, in the parish and ward aforesaid, the said *Edward* was likewise indebted to the said *William Bond* in other one hundred pounds of the like money of *England* aforesaid, for so much other money of him the said *William* by
the

the said *Edward*, for and to the use of him the said *William*, before that time had and received; and being thereof so indebted, he the said *Edward* in consideration thereof afterward, to wit, the same day and year last aforesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the said *William Bond* then and there faithfully promised that he the said *Edward* the said one hundred pounds last mentioned to the said *William Bond*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy: nevertheless the said *Edward* his said several promises and undertakings in form aforesaid made not at all regarding, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the same *William Bond* in this behalf, the said several sums of money, or any part thereof, to the said *William* hath not yet paid, nor hath hitherto in any manner satisfied him for the same, although to do this he the said *Edward* afterwards, to wit, the same day and year last aforesaid, at *London* aforesaid in the parish and ward aforesaid, was requested by him the said *William Bond*; whereupon the same *William* saith that he is injured, and hath sustained damage to the value of one hundred pounds; and thereupon he brings suit, &c.

And now here at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, until which day the said *Edward* (saving to himself all and all manner of exceptions as to the bill aforesaid) had leave to imparl to the said bill, and then to answer, &c. before the lady the queen at *Westminster* come as well the said *William Bond* by his attorney aforesaid, as the said *Edward Barnes* by *John Greene* his attorney; and the said *Edward* defends the force and injury, &c. and prays judgment of the declaration aforesaid, because he says that the said *William Bond* heretofore, that is to say, after the said 2d day of *April* in the 4th year of the reign of the said lady *Ann*, now queen of *England*, &c. to wit, on the 22d day of *May* in the term of *Easter* last past in the court of the said lady the queen of the bench at *Westminster* in the county of *Middlesex*, impleaded him the said *Edward* of the said one hundred pounds; and the same *Edward* in the same court of the lady the queen of the bench, before the justices of the same court appearing by *Edward Hale* his then attorney, the said *William Bond* by *Stephen Hales* his then attorney in the same court declared against him the said *Edward Barnes*, for that, to wit, that whereas the said *Edward Barnes* on the second day of *April* in the 4th year of the reign of the lady *Ann*, now queen of *England*, &c. at *London* aforesaid, to wit, in the parish of the Blessed *Mary*

Special impar-
lance.

Pleads another
action pending
for the same
debt.

Mary of the Arches in the ward of *Cheape*, was indebted to the said *William* in one hundred pounds of lawful money of *England*, for the like sum of money of him the said *William*, by him the said *William*, at the special instance and request of him the said *Edward*, to him the said *Edward* before that time lent and advanced; and being thereof so indebted, he the said *Edward*, in consideration thereof afterwards, to wit, the same day and year abovesaid, at *London* abovesaid, in the parish and ward abovesaid, assumed upon himself, and to the said *William Bond* then and there faithfully promised, that he the said *Edward*, the said one hundred pounds, to the same *William*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy. And also whereas afterwards, to wit, the same day and year last abovesaid, at *London* abovesaid in the parish and ward abovesaid, the said *Edward* was likewise indebted to the said *William Bond* in other one hundred pounds of the like money of *England* abovesaid, for so much other money of him the said *William* by the said *Edward*, for and to the use of him the said *William*, before that time had and received; and being thereof so indebted, he the said *Edward* in consideration thereof afterward, to wit, the same day and year last abovesaid, at *London* abovesaid in the parish and ward abovesaid, assumed upon himself, and to the said *William Bond* then and there faithfully promised that, he the said *Edward* the said one hundred pounds last mentioned to the said *William Bond*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy: nevertheless the said *Edward* his said several promises and undertakings in form abovesaid made not at all regarding, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the same *William Bond* in this behalf, the said several sums of money, or any part thereof, to the said *William* had not then paid, nor had then in any manner satisfied him for the same, although to do this he the said *Edward* afterwards, to wit, the same day and year last abovesaid, at *London* abovesaid in the parish and ward abovesaid, was requested by him the said *William Bond*; whereupon the same *William* said that he was injured, and sustained damage to the value of one hundred pounds; and thereupon he then brought suit, &c. as by the record thereof in the said court of the said lady the queen of the bench at *Westminster* in the county of *Middlesex* abovesaid remaining not discontinued or determined, more fully appears: and this he is ready to verify by the record thereof, as the court shall consider: whereupon he prays judgment of the declaration abovesaid now here pending in court for the same cause, and that the said declaration may be quashed, &c.

And

And the said *William Bond* saith, that he by any thing by the said *Edward* above in pleading alledged ought not to be barred from having his said action thereof against the said *Edward*, because he saith, that the said plea by the said *Edward* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to bar him the said *William* from having his said action thereof against the said *Edward*, to which he the said *William* hath no necessity, neither is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient plea in this behalf, he the said *William Bond* prays judgment and his damages by occasion of the premises aforesaid, to be adjudged to him, &c.

Demurrer.

And the said *Edward* saith, that the plea aforesaid by him the said *Edward* in manner and form aforesaid above pleaded, and the matter in the same contained are good and sufficient in law to bar him the said *William* from having his said action against him the said *Edward*; which said plea, and the matter in the same contained, he the said *Edward* is ready to verify and prove, as the court, &c. And because the said *William* to that plea hath not answered, nor hath hitherto in any manner denied the same, he the said *Edward* as before prays judgment, and that the said *William* may be barred from having his said action thereof against him the said *Edward*, &c. But because the court of the said lady the queen now here is not yet advised of giving their judgment of and concerning the premises, day thereupon is given to the parties aforesaid before the lady the queen at *Westminster*, until ————— next after ————— to hear their judgment of and concerning the premises, for that the court of the said lady the queen now here are not yet thereof, &c.

Joinder in demurrer.

Pleas before our Lady the Queen at Westminster of the Term of the Holy Trinity in the fourth Year of the Reign of the Lady Ann, now Queen of England, &c.

Wallis against Lewis. 2 Ld. Raym. 1215.

London, **B**E it remembered, that heretofore, to wit, (to wit) **B** in the term of *Easter* last past, before the lady the queen at *Westminster*, came *Elizabeth Wallis*, widow, executrix of the last will and testament of *Edward Wallis* her
 Action by an executrix for monies of the testator received (by defendant) after his death to the plaintiff's

use as executor,
without any
proof of the
letters testamen-
tary.

her late husband, deceased, by *Richard Alpe* her attorney, and brought here into the court of the said lady the queen then there her certain bill against *Thomas Lewis*, in the custody of the marshal, &c. of a plea of trespass upon the case: and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *London* (to wit) *Elizabeth Wallis*, widow, executrix, of the last will and testament of *Edward Wallis* her late husband, deceased, complains of *Thomas Lewis*, in the custody of the marshal of the *Marshalsea* of the lady the queen, being before the queen herself, for that, (to wit) that whereas the said *Thomas* on the first day of *March* in the year of our Lord 1704, at *London* aforesaid, in the parish of the *Blessed Mary of the Arches* in the ward of *Cheape*, was indebted to the said *Elizabeth* in fifty pounds and eight shillings of lawful money of *England*, for divers sums of money by the said *Thomas* to the use of her the said *Elizabeth*, as executrix of the aforesaid *Edward*, by the said *Thomas* before that time had and received; and being thereof so indebted, he the said *Thomas*, in consideration thereof afterwards, to wit, the same day and year abovesaid, at *London* aforesaid, in the parish and ward aforesaid, assumed upon himself, and to the same *Elizabeth* then and there faithfully promised that he the said *Thomas* the said fifty pounds and eight shillings to the said *Elizabeth*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy. And also whereas afterward, to wit, the same day and year abovesaid, at *London* aforesaid, in the parish and ward aforesaid, the said *Thomas* was indebted to the said *Elizabeth* in other fifty pounds and eight shillings of like lawful money of *England*, for money by him the said *Thomas*, to the use of her the said *Elizabeth*, as executrix of the said *Edward*, before that time had and received; and being so indebted, he the said *Thomas*, in consideration thereof afterward, to wit, the same day and year last mentioned, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the said *Elizabeth* then and there faithfully promised, that he the said *Thomas* the said fifty pounds and eight shillings last mentioned, to the said *Elizabeth*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy: nevertheless the said *Thomas*, his several promises and undertakings aforesaid in manner aforesaid made, not at all regarding, but contriving and fraudulently intending, craftily and subtilly, to deceive and defraud the said *Elizabeth* in this behalf, the said several sums of money, or any part thereof, to the said *Elizabeth* hath not paid, or in any manner satisfied her for the same, although to do this, the said
Thomas

Thomas afterward, to wit, the 20th day of *March* in the fourth year aboveſaid, at *London* aforeſaid in the pariſh and ward aforeſaid was requested by the ſaid *Elizabeth*, but the ſame to pay to her hath hitherto abſolutely reſuſed, and yet doth reſuſe, to the damage of her the ſaid *Elizabeth* of one hundred pounds; and thereupon ſhe brings ſuit, &c.

And now here at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this ſame term, until which day the ſaid *Thomas* (ſaving to himſelf all and all manner of exceptions as to the bill aforeſaid) had leave to imparl to the ſaid bill, and then to answer, &c. before the lady the queen at *Weſtminſter* come as well the ſaid *Elizabeth* by her attorney aforeſaid, as the ſaid *Thomas* by *Joſeph Taylor* his attorney; and the ſaid *Thomas* defends the force and injury, &c. and ſays, that he the ſaid *Thomas* ought not to be compelled to answer to the ſaid bill of the ſaid *Elizabeth*, becauſe he ſays, that the ſaid *Elizabeth* heretofore, to wit, in the term of Saint *Hilary* laſt paſt in the court of the lady the queen of the bench at *Weſtminſter*, before the juſtices of the ſaid lady the queen of the bench there, impleaded the ſaid *Thomas* in a certain plea of treſpaſs upon the caſe, and for the ſame cauſe in the declaration aforeſaid abovementioned, as by the record thereof in the ſame court remaining appears; and that the parties aforeſaid, to and in the plea aforeſaid in the ſaid court of the bench, and the ſaid *Elizabeth* the now plaintiff, and the ſaid *Thomas*, are the ſame perſons, and not others, nor different, and that the plea aforeſaid in the ſaid court of the bench yet remains undetermined; and this he is ready to verify: wherefore he prays judgment if he ought to be compelled to answer to the bill aforeſaid, &c.

Special impar-
lance.

Plea another
action pending
for the ſame
cauſe.

And the ſaid *Elizabeth* ſaith, that by any thing by the ſaid *Thomas* above in pleading alledged, the ſaid *Thomas* ought to be compelled to answer to the ſaid bill of her the ſaid *Elizabeth*, becauſe ſhe ſays that there is not any ſuch record of the plea aforeſaid had in the ſaid court of the ſaid lady the queen of the bench at *Weſtminſter* aforeſaid exiſting, as the ſaid *Thomas* above in pleading hath alledged; and this ſhe is ready to verify: whereupon ſhe prays judgment, and that the ſaid *Thomas* may answer to the ſaid bill of her the ſaid *Elizabeth*, &c.

No ſuch record.

And the ſaid *Thomas* ſaith, that the plea aforeſaid by the ſaid *Elizabeth* in manner and form aforeſaid above pleaded in reply, and the matter in the ſame contained, are not ſufficient in law to compel him the ſaid *Thomas* to answer to the bill of her the ſaid *Elizabeth* aforeſaid; and that he to that plea in manner and form aforeſaid above pleaded hath

Demurrer.

no

no necessity, neither is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient replication of her the said *Elizabeth* in this behalf, he the said *Thomas* as before prays judgment, and that the said *Elizabeth* may thereupon be barred from having an answer to her said bill against him the said *Thomas*, &c.

Joinder in
demurrer.

And the said *Elizabeth* saith, that the plea aforesaid by her the said *Elizabeth* in manner and form aforesaid above pleaded in reply, and the matter in the same contained, are good and sufficient in law to compel him the said *Thomas* to answer to the bill of her the said *Elizabeth* aforesaid; which said plea, and the matter in the same contained, she the said *Elizabeth* is ready to verify and prove, as the court, &c. And because the said *Thomas* to that plea hath not answered, nor the same hath hitherto in any manner denied, she the said *Elizabeth* prays judgment, and that the said *Thomas* may answer over to the bill of her the said *Elizabeth*, or for want thereof, that her damages, by occasion of the premises, may be adjudged to her, &c. But because the court of the said lady the queen now here is not yet advised to give their judgment of and concerning the premises, day thereupon is given to the parties aforesaid before the lady the queen at *Westminster*, until ——— next after ——— to hear their judgment of and concerning the premises, for that the court of the said lady the queen now here are not yet thereof, &c.

*Pleas before our Lady the Queen at Westminster
of the Term of the Holy Trinity in the fourth
Year of the Reign of the Lady Ann, Queen of
England, &c.*

The Queen against Highmore. 2 Ld. Raym.
1220.

Conviction for
a cheat in the
measure of
coals.

London, **T**HE lady the queen hath sent to *Owen Buckingham*, knt. mayor of the city of *London*, and *Richard Levett*, knt. two of the keepers of her peace and her justices, assigned to keep the peace in the city aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the same city, her writ close in these words, *J. Ann*, by the grace

grace of God, of *England, Scotland, France and Ireland* queen, defender of the faith, &c. To *Owen Buckingham*, knt. mayor of the city of *London*, and *Richard Levett*, knt. two of the keepers of our peace and our justices, assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed within our city of *London*, and to every of them, greeting: we willing for certain causes, that all and singular records of conviction of whatsoever trespasses and contempts against the form of the statute, intituled, An act for regulating the measures and prices of coals set forth, whereupon *Edward Highmore* is convicted (as it is said) be sent by you before us, command you, that you send, or one of you send, all and singular the records of conviction aforesaid, with all things touching them, by whatsoever name the said *Edward Highmore* may be named in the same, before us, under your seals, or the seal of one of you, from the day of the Holy Trinity in three weeks, wheresoever we shall then be in *England*, together with this writ, that we may further do thereupon, that which of right and according to the law and custom of our realm of *England* we shall see to be done. Witness *J. Holt*, knt. at *Westminster* the 8th day of *June* in the 4th year of our reign. At which said three weeks of the Holy Trinity, before the said lady the queen at *Westminster*, *Owen Buckingham*, knt. mayor of the city of *London*, and *Richard Levett*, knt. two of the justices of the peace in the said writ named, returned the writ aforesaid, and sent the record in the same writ mentioned, in these words:

Certiorari to remove the conviction to *B R.*

London, **B**E it remembered, that on the 16th day of (to wit) *May* in the 4th year of the reign of our lady *Ann*, by the grace of God, of *England, Scotland, France and Ireland* queen, defender of the faith, &c. one *Margaret Walker* of the parish of *Saint Faith the Virgin* in the ward of *Baynard's Castle* within the city of *London* aforesaid, widow, at the parish and ward aforesaid, came before us *Owen Buckingham*, knt. mayor of the city of *London* aforesaid, and *Richard Levett*, knt. one of the aldermen of the city aforesaid, then being two justices of the said lady the now queen, assigned to keep the peace for the city aforesaid, and then and there the said *Margaret* complained and informed us the said justices, that one *Edward Highmore* of the parish of *Saint Peter Paul's Wharfe* in the ward of *Queenhithe*, *London*, woodmonger, on the seventh day of *July* last past * exposed to sale, and actually sold and delivered to the aforesaid *Margaret Walker* a certain quantity

To have made the conviction good these words ought to have been inserted, * "At *London* aforesaid in the parish and ward aforesaid."

quantity of sea-coals, (imported into the river of *Thames*) for so much as, and instead of seven chaldrons of sea-coals, at the rate or price of thirty-four shillings, to be paid for every chaldron thereof; and that for, and instead of the full and due quantity and measure of seven chaldrons (of which every chaldron ought to contain thirty-six bushels heaped up, according to the bushel for that purpose sealed, kept at *Guibald* in *London*) the said quantity of coals so sold and delivered as aforesaid, fell short and wanted twenty-six bushels of the full and due measure of seven chaldrons, computing thirty and six bushels heaped up, according to the bushel for that purpose sealed, kept at *Guibald, London*, aforesaid, against the form and effect of the statute in that case lately made and provided; upon which said complaint and information of the said *Margaret Walker*, we the said *Owen Buckingham*, mayor of the city aforesaid, and *Richard Levett*, one of the aldermen of the same city, and then two justices of the said lady the now queen, assigned to keep the peace for and within the city aforesaid, on the said 16th day of *May* in the above said fourth year of the reign of the said lady the now queen, at the parish and ward aforesaid, the said *Margaret* and *Edward* being convened and called before us, and having heard and examined the complaint aforesaid, in the presence of him the said *Edward Highmore*, by and upon the several oaths of *Ralph Walker, Richard Newman, Robert Hayes, Thomas Duncce, Joseph Vickers* and *Francis Griffin*, sufficient and credible witnesses, before us the said justices, for that cause then and there sworn upon the holy evangelists of God, it is manifestly proved to us the said justices, that the said quantity of sea-coals so as aforesaid sold and delivered to the said *Margaret Walker* by the said *Edward Highmore*, at the time of the sale and delivery thereof did fall short and wanted twenty-six bushels of seven chaldrons of thirty and six bushels heaped up, according to the bushel for that purpose sealed, kept at *Guibald, London*, aforesaid, to be computed, to make up every chaldron: and having fully heard and considered the allegations of the said *Edward Highmore* to the matter of the said complaint; therefore we the said justices adjudge him the said *Edward Highmore* guilty of the sale and delivery of six chaldrons and ten bushels of sea-coals to the said *Margaret Walker*, for and instead of seven chaldrons of such coals*, against the form and effect of the statute aforesaid. And we the said justices do further adjudge, that the said *Edward Highmore*, by occasion of the premises,

* " To wit, at *London* aforesaid in the parish and ward aforesaid."

misses, doth forfeit the said quantity of sea-coals by him. so as afore said sold and delivered, and also the sum of twenty and one pounds six shillings and ten pence and a halfpenny, being the double value thereof, and that one moiety of the coals and money so as afore said forfeited, shall be paid and delivered to the said *Margaret Walker*, the party prosecuting in this behalf; and the other moiety thereof shall be delivered to the overseers of the poor of the said parish of *Saint Faith the Virgin*, now united to the parish of *Saint Augustine, London*, to the use of the poor of the parish. Given under our hands and seals at *London* the day and year first above said.

N. B. This conviction was quashed, because it doth not shew that the coals were sold in the city of *London*, or within the liberties thereof. See the report.

Pleas at Westminster before our Lady the Queen of the Term of the Holy Trinity in the fourth Year of the Reign of Lady Ann, Queen of England, &c.

The Queen against Atkinson and another. 2 Ld. Raym. 1248.

Borough of *Leeds*, **H**eretofore, that is to say, on the (to wit) 10th day of *January* in the 3d year of the reign of our lady *Ann*, by the grace of God, queen of *England, &c.* at the general quarter-session of the peace of the lady the queen, holden at *Leeds* for the borough afore said, before *Edmund Barker*, esq; mayor, *Jasper Blythman*, esq; recorder, *Thomas Dixon*, *William Roake* and others their fellows, aldermen and justices of the said lady the queen, assigned to keep the peace within the borough afore said, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed and done in the same borough, and from thence continued and holden by adjournment at *Leeds* afore said for the borough afore said, on the 14th day of *February* in the year above said, before the said *Edmund Barker*,
Indictment against the collectors of a tax for falsely extorting money under colour of their office.

Barker, mayor, *John Blythman*, recorder, and *William Rooke*, and before *Thomas Kitchingman*, *John Dodgson* and others their fellows, justices of the said lady the queen as aforesaid, assigned to keep the peace within the borough aforesaid, by the oath of twelve jurors, of good and lawful men of the borough aforesaid, impanelled, sworn and charged to inquire for the said lady the queen, for the body of the borough aforesaid, it was presented, that whereas on the 24th day of *March* in the 2d year of the reign of our lady *Ann*, by the grace of God, now queen of *England*, &c. *John Atkinson* late of *Leeds* in the borough aforesaid, linen draper, and *William Barstow*, late of *Leeds* aforesaid in the borough aforesaid grocer, then being collectors of several sums assessed upon the inhabitants of a certain liberty, called *Leeds Upper Division* within the borough aforesaid, mentioned and expressed in a certain assessment made and confirmed in pursuance of a certain act of parliament made in the first year of the reign of our said lady the now queen of *England*, &c. intituled, An act for granting an aid to her majesty by divers subsidies and a land-tax, the said *John Atkinson* and *William Barstow* on the said 24th day of *March* in the abovesaid 2d year of the reign of the said lady the now queen at *Leeds* aforesaid in the borough aforesaid, by colour of the office aforesaid, unlawfully, extorsively and deceitfully, and of their own wrong, exacted, received and had of one *Thomas Calverly*, then of *Leeds* aforesaid in the borough aforesaid (being not assessed at all by virtue of the act of parliament aforesaid) the sum of four shillings, and that the said *John Atkinson* and *William Barstow* the same sum of four shillings so as aforesaid of the said *Thomas Calverly* unlawfully, extorsively and deceitfully exacted, received and had, and to the proper use of them the said *John Atkinson* and *William Barstow* then and there unlawfully, injuriously and deceitfully converted, to the great damage of him the said *Thomas Calverly*, to the evil example of all other delinquents in such case, and against the peace of the said lady the now queen, her crown and dignity; which said indictment the said lady the now queen afterward, for certain causes made to come to be determined before her, by which the sheriff of the county of *York* is commanded, that he do not omit, &c. but that he cause them to come to answer, &c. And now, to wit, on *Friday* next after the morrow of the Holy *Trinity* in this same term, before the lady the queen at *Westminster*, come the said *John Atkinson* and *William Barstow* by *Francis Pember* their attorney, and having severally heard the indictment aforesaid lay, that they do not apprehend
that

that the said lady the now queen will or ought any further to impeach or trouble them the said *John* and *William* for the premisses, because they say that the said indictment, and the matter in the same contained, are not sufficient in law, to which they have no necessity, neither are they bound by the law of the land in any manner to answer, and for the insufficiency thereof pray judgment, and that they may be dismissed of the premisses by the court here, &c. And *Simon Harcourt*, esq; coroner and attorney of the said lady the queen, in the court of the said queen, before the queen herself, who prosecutes for the said lady the queen in this behalf, saith, that the indictment aforesaid, and the matter in the same contained, are good and sufficient in law to compel the said *John Atkinson* and *William Barstow* to answer to the same indictment; which said indictment, and the matter in the same contained, the said coroner and attorney of the said lady the queen for the said lady the queen is ready to verify and prove, as the court, &c. Wherefore since the said *John Atkinson* and *William Barstow* have not answered to the said indictment, nor deny the matter in the same contained, the said coroner and attorney of the said lady the queen, for the said lady the queen, prays judgment, and that the said *John Atkinson* and *William Barstow* may be convicted of the premisses in the said indictment above laid to their charge, &c.

Demurrer.

Joinder.

Pleas before the Lady the Queen at Westminster of the Term of Saint Michael in the eleventh Year of the Reign of our Lady Ann, Queen of Great Britain, &c. Roll 224.

Smith against Boheme and others. 2 Ld. Raym. 1396. cited.

THE lady the queen hath sent to her right trusty and well beloved *Thomas lord Trevor*, her chief justice of the bench, her writ-close in these words: *Ann*, by the grace of God, of *Great Britain, France and Ireland* queen, defender of the faith, &c. To her right trusty and well-beloved *Thomas lord Trevor*, her chief justice of the bench, greeting: Forasmuch as in the record and process,

Action on the case on a special promise.

process, and also in giving of judgment in a plaint which was in our court before you and your companions, our justices of the bench aforesaid, by our writ, between *Caleb Smith* and *Samuel Boheme* late of *London*, gent. and *Maurice Boheme* late of *London*, distiller, of a certain trespass upon the case, done to the said *Caleb* by the said *Samuel* and *Maurice*, as it is said, manifest error hath intervened, to the great damage of the said *Samuel* and *Maurice*, as by their complaint we are informed: we willing that the said error, if any be, be duly amended, and full and speedy justice done to the said parties in this behalf, do command you, that if judgment be given thereupon, then you send to us distinctly and plainly under your seal the record and process aforesaid, with all things touching the same, and this writ, so that we may have them on the octave of the Holy Trinity, wheresoever we shall then be in *England*, that inspecting the record and process aforesaid, we may cause further to be done thereupon for amending the said error, as of right and according to the law and custom of *England* shall be meet to be done. Witness ourself at *Westminster* the fourth day of *June* in the eleventh year of our reign.

Layton.

Which said writ is thus returned: the answer of *Thomas* lord *Trevor*, the chief justice within named.

The record and process of the plaint, whereof mention is within made, with all things touching the same, I send before the lady the queen wheresoever, &c. at the day within contained, in a certain record to this writ annexed, as I am within commanded.

Trevor.

Pleas

Pleas inrolled at Westminster before Thomas Lord Trevor, Baron of Bromham, and his Companions, Justices of the Lady the Queen of the Bench of the Term of Saint Hilary in the tenth Year of the Reign of the Lady Ann, by the Grace of God, of Great Britain, &c. Queen, Defender of the Faith, &c. Roll 400.

London, SAMUEL Boheme late of London, gent. and (to wit) Maurice Boheme late of London, silversmith, were attached to answer Caleb Smith of a plea of trespass upon the case, &c. And whereupon the said Caleb by Richard Humphreys his attorney complains, that whereas one Samuel Boheme the younger on the tenth day of August in the year of our Lord 1711, at London, to wit, in the parish of Saint Mildred the Virgin in the Poultry in the ward of Cheape was indebted to the said Caleb in seventy-one pounds twelve shillings and ten pence, for divers goods, wares and merchandizes to the said Samuel Boheme the younger before that time by the said Caleb sold and delivered; and the said Samuel Boheme the younger being so indebted to the said Caleb, he the said Caleb, for the better and speedier obtaining and recovery of that debt afterward, to wit, on the 26th day of September in the year abovesaid, the said Caleb levied his certain plaint against the said Samuel Boheme the younger, by the name of Samuel Boheame, in the court of the lady the now queen of record, holden before George Thorold, knight and baronet, one of the late sheriffs of the city of London, in his counter in the Poultry, in the parish and ward abovesaid, in a plea of trespass upon the case, to the damage of him the said Caleb of one hundred and fifty pounds, according to the custom of the city of London abovesaid, and then and there, according to the custom of that city, at the petition of him the said Caleb, by the said court it was by word of mouth commanded to John Russell, one of the serjeants at mace of the said late sheriff, and a minister of the court abovesaid, that he, according to the custom of the court abovesaid, should take and arrest the said Samuel Boheme the younger, by the name of Samuel Boheame, by his body, and keep him safely, so that he might have his body at the said court of the said lady the queen, to wit, on the 27th day of the same month of September in the year abovesaid, before the said late sheriff, holden in his counter abovesaid, to answer the

Action upon a special promise to pay plaintiff a sum of money, or to render the body of S. B. to prison.

That one S. B. was indebted to plaintiff in 71l. 12s. 10d.

for which he arrested him in the sheriff's court of London.

And S. B. being in custody of the serjeant at mace, the defendants, in consideration that plaintiff would discharge him, promised to pay the money, or render his body to the serjeant at mace.

Breach.

said *Caleb* in the plea of his plaint aforesaid, according to the custom of the city aforesaid: by virtue of which said precept, and before the said 27th day of *September* in the year aforesaid, the said *John Russell*, the said serjeant at mace of the said late sheriff, took and arrested the said *Samuel Boheme* the younger, by the name of *Samuel Boheame*, by his body, and had him the said *Samuel Boheme* in his custody for the cause aforesaid; and the said *Samuel Boheme* being so arrested and in custody, they the said *Samuel Boheme* the now defendant, and *Maurice*, had notice thereof; and afterwards, to wit, on the 26th day of *September* in the year aforesaid, at *London* aforesaid in the parish and ward aforesaid, they the said *Samuel Boheme* the now defendant, and *Maurice Boheme*, in consideration that the said *Caleb*, at the special instance and request of the said *Samuel* the now defendant, and *Maurice*, would discharge the said *Samuel Boheme* the younger, by the name of *Samuel Boheame*, out of the custody of the said *John Russell*, the said serjeant at mace of the said sheriff, assumed upon themselves, and to the said *Caleb* then and there jointly and severally faithfully promised to pay to the said *Caleb Smith*, or to his order upon demand, 71 l. 12 s. 10 d. for value received, or surrender the body of him the said *Samuel Boheme* the younger to the custody of the said *John Russell*, serjeant at mace of the said late sheriff, to the action so brought by the said *Caleb Smith* against him. And the said *Caleb* in fact saith, that he the said *Caleb* giving credit to the said promises and undertakings of the said *Samuel* the now defendant, and *Maurice*, at the aforesaid instance and request of them the said *Samuel* the now defendant, and *Maurice*, did then and there discharge the said body of him the said *Samuel Boheme* the younger, by the name of *Samuel Boheame*, out of the custody of the said *John Russell*, serjeant at mace aforesaid. And afterward, to wit, the same day and year last aforesaid, at *London* aforesaid in the parish and ward aforesaid, gave notice thereof to the said *Samuel* the now defendant, and to the said *Maurice*: nevertheless the said *Samuel* the now defendant, and *Maurice*, not at all regarding their said promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive the said *Caleb* in this behalf, have not paid, nor hath either of them paid to the said *Caleb* the said 71 l. 12 s. 10 d. nor have they surrendered the body of the said *Samuel Boheme* the younger to the custody of the said sheriff, or of his serjeant at mace aforesaid, in the action aforesaid, as according to their promises and undertakings aforesaid, they the said *Samuel* the now defendant, and *Maurice*,

rice,

rice, ought to have done, although by the said *Caleb* afterward, to wit, on the said 27th day of *September* in the year above said, they were requested. And also whereas the said *Samuel Boheme* the now defendant, and *Maurice*, after the first day of *May* in the year of our Lord 1705, to wit, on the 26th day of *September* in the year of our Lord 1711, at *London* afore said in the parish and ward afore said, made their certain note in writing, commonly called a promissory note, with their own proper hands subscribed thereunto, bearing date the day and year last above said; by which said note they the said *Samuel* the now defendant, and *Maurice*, jointly and severally promised to pay to the said *Caleb Smith*, or order, upon demand, 71*l.* 12*s.* 10*d.* for value received, or surrender the body of him the said *Samuel Boheme* the younger to the action brought by the said *Caleb Smith* against him; and they the said *Samuel Boheme* the now defendant, and *Maurice*, have not surrendered the body of the said *Samuel Boheme* the younger, by the name of *Samuel Boheame*, according to the tenor of the said note: and by reason of the premises, and also by force of the statute in such case lately made and provided, they the said *Samuel Boheme* the now defendant, and *Maurice*, became jointly and severally liable to pay to the said *Caleb* the said sum of money, according to the tenor of the note afore said; and in consideration thereof they the said *Samuel Boheme* the now defendant, and *Maurice*, afterward, to wit, the first day of *October* in the year last above said, at *London* afore said in the parish and ward afore said, assumed upon themselves, and to the said *Caleb Smith* then and there jointly and severally faithfully promised to pay to the said *Caleb Smith* the said 71*l.* 12*s.* 10*d.* according to the tenor of the said note: nevertheless the said *Samuel* the now defendant, and *Maurice*, their promises and undertakings last mentioned not at all regarding, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said *Caleb* in this behalf, the sum of money last mentioned, or any part thereof, to the said *Caleb* have not yet paid, nor hath either of them paid, nor have they surrendered, nor hath either of them surrendered the body of him the said *Samuel Boheme* the younger, by the name of *Samuel Boheame*, to the action last mentioned, but they have wholly refused, and yet do refuse, to perform the promises last mentioned in any manner. And also whereas the said *Samuel Boheme* the now defendant, and *Maurice*, after the first day of *May* in the year of our Lord 1705, to wit, on the 26th day of *September* in the year of our Lord 1711, at *London* afore said in the parish and ward afore said, made their certain note in writing, commonly called a promissory note,

Another count
on the note.

Second count
upon a note in
writing upon
the statute.

their own proper hands being subscribed thereunto, bearing date the day and year last above mentioned, by which said note they the said *Samuel* the now defendant, and *Maurice*, jointly and severally promised to pay to the said *Caleb Smith*, or order, upon demand, 71*l.* 12*s.* 10*d.* for value received; and by reason thereof, and also by force of the statute in such case lately made and provided, they the said *Samuel Bobeme* the now defendant, and *Maurice*, become jointly and severally liable to pay to the said *Caleb* the same sum of money, according to the tenor of the said note; and in consideration thereof they the said *Samuel Bobeme* the now defendant, and *Maurice*, afterward, to wit, on the 2d day of *October* in the year last above said, at *London* aforesaid in the parish and ward aforesaid, assumed upon themselves, and to the said *Caleb*, then and there jointly and severally faithfully promised to pay to the said *Caleb* the said 71*l.* 12*s.* 10*d.* upon demand: nevertheless the said *Samuel Bobeme* the now defendant, and *Maurice*, not at all regarding their promises last mentioned so as aforesaid to the said *Caleb* in form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Caleb* in this behalf, the said last sum of money, or any part thereof, to the said *Caleb* have not yet paid, nor hath either of them paid, or in any manner contented him for the same, (although to do this the said *Samuel* the now defendant, and *Maurice*, afterwards, to wit, on the 3d day of *October* in the year last above said, at *London* aforesaid in the parish and ward aforesaid, by the said *Caleb* have been requested) but to pay the same to him they have wholly refused, and yet do refuse, to the damage of him the said *Caleb* of eighty pounds; and thereupon he brings his suit, &c.

General issue.

And the said *Samuel* and *Maurice* by *Edward Gilbert* their attorney come and defend the force and injury when, &c. and say, that they did not assume upon themselves in manner and form as the said *Caleb* above complains against them; and of this they put themselves upon the country; and the said *Caleb* likewise: therefore the sheriff is commanded, that he cause to come here on the octave of the purification of the blessed *Mary* twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. At which day the jury between the parties aforesaid of the plea aforesaid was respited between them here until this day, to wit, from *Easter* day in fifteen days then next following, unless *Thomas* lord *Treuer*, baron of *Bromham*, chief justice of the lady the queen

Nisi prius.

queen of the bench here, assigned by form of the statute, &c. on *Thursday* the 14th day of *February* next, past, at *Guibald, London*, should first come. And now here at this day cometh the said *Caleb* by his attorney aforesaid; and the said chief justice, before whom, &c. hath sent his record in these words: Afterwards at the day and place within contained, before *Thomas* lord *Trevor*, baron of *Bromham*, the chief justice within written, (*Joseph Houlton*, gent. being associated unto him by form of the statute, &c.) came the within named *Caleb Smith* by his attorney within contained, and the within named *Samuel Boheme* and *Maurice Boheme*, although solemnly called came not, but made default; therefore the jury within written was taken against them by default: and the jurors of the jury being called, certain of them, to wit, *Lancelot Skinner*, *Edward Bull*, *John Clement*, *Nicholas Jarvis* and *Thomas Boucher* came and are sworn upon that jury: and because the rest of the jurors of the same jury did not appear, therefore others of the bystanders by the sheriffs of *London* to this being chosen, at the request of the said *Caleb Smith*, and by the command of the chief justice aforesaid are newly appointed, whose names are affixed in the panel within written, according to the form of the statute in such case made and provided, which said jurors so newly appointed, to wit, *Edward Skinner*, *John Meredith*, *Jonathan Kendall*, *Francis Ludlam*, *Benjamin Russell*, *Downes Ward* and *John Crompton* being called likewise come, who being chosen, tried and sworn to speak the truth of the premises within contained, together with the other jurors aforesaid before impanelled and sworn, as to the first and second promises and undertakings in the declaration within written within mentioned, say upon their oath, that the said *Samuel Boheme* and *Maurice Boheme* assumed upon themselves in manner and form as the said *Caleb Smith* within against them complains: and they assents the damages of him the said *Caleb*, by occasion of the non-performance of the promises and undertakings aforesaid within written, besides his costs and charges by him laid out about his suit in this behalf to 61*l.* 12*s.* 10*d.* and for those costs and charges to fifty-three shillings and four-pence; and as to the rest of the promises and undertakings in the declaration aforesaid mentioned, the jurors aforesaid upon their said oath say, that the said *Samuel Boheme* and *Maurice Boheme* did not assume upon themselves in manner and form as they the said *Samuel* and *Maurice* have within by pleading alledged for themselves; therefore it is considered, that the said *Caleb* do recover against the said *Samuel* and *Maurice* his

Poffes.

Tales.

Verdict for plaintiff as to part.

For the defendant as to part.

Judgment for plaintiff as to part.

Defendant in
mercy.

For the defend-
ant as to part.
Plaintiff in
mercy,

his damages aforesaid to 64*l.* 6*s.* 2*d.* by the jurors aforesaid in form aforesaid assessed, and also 21*l.* 13*s.* 10*d.* to the said *Caleb*, at his request, for his costs and charges aforesaid by the court here by way of increase adjudged; which said damages amount in the whole to 86*l.* and the said *Samuel* and *Maurice* thereof in mercy, &c. And the said *Caleb* likewise in mercy for his false claim against the said *Samuel* and *Maurice* as to the rest of the promises and undertakings aforesaid in the declaration aforesaid likewise mentioned, whereof they the said *Samuel* and *Maurice* by the jurors aforesaid are above acquitted; and the said *Samuel* and *Maurice* may go thereof without day, &c.

Common errors assigned, That the declaration is insufficient, and that the judgment is for the plaintiff where it ought to be for defendant. No original, *in nullo est erratum* pleaded.

Pleas before the Lord and Lady the King and Queen at Westminster of the Term of the Holy Trinity in the sixth Year of the Reign of William and Mary, King and Queen of England, &c.

Wilson against Law. 1 *Ld. Raym.* 20.

Appeal of
murder.

(* Of it) i. e.
of the death of
his brother.

Middlesex, *JOHN Law* late of the parish of *Saint Giles in (to wit) the Fields* in the county aforesaid, gent. was attached by his body to answer to *Robert Wilson*, gent. the brother and heir of *Edward Wilson*, gent. concerning the death of the aforesaid *Edward*, formerly his brother, whereof he appealeth him; and there are pledges of prosecuting, that is to say, *Charles Williams* of the parish of *Saint James* within the liberty of *Westminster* in the county aforesaid, tapestry-maker, and *John Wheeler* of the parish of *Saint Mary le Savoy* in the county aforesaid, gent. And whereupon the said *Robert Wilson*, the brother and heir of the said *Edward Wilson*, in his proper person instantly appealeth the said *John Law* of it*; that when the aforesaid *Edward Wilson* was in the peace of God and of the lord the now king and of the lady the now queen, at the aforesaid parish of *Saint Giles in the Fields*, in the said county of *Middlesex*, on the ninth day of *April* in the sixth year of the reign of the lord *William* and lady *Mary*, by the grace of God, of *England, Scotland, France and Ireland* king and queen, defenders of the faith, &c. about the first hour after mid-day of the same day came the

the aforesaid *John Law* feloniously and as a felon, of the said lord the now king and lady the now queen, lying in wait, and of his malice aforethought, and assault premeditated, against the peace of the said lord the now king and lady the now queen, their crown and dignity, and in the same day, year, hour and place, with force and arms, &c. feloniously, wilfully, and of his malice aforethought made an assault upon him the said *Edward Wilson*; and the said *John Law* then and there with a certain sword made of iron and steel of the value of five shillings, which he the said *John Law* in his right hand then and there drew, had and held, then and there violently, feloniously, wilfully, and of his malice aforethought, did strike, stab and thrust in, and upon the upper part of the belly of him the said *Edward Wilson*, near the breast and middle of the body of him the said *Edward*, giving to the same *Edward Wilson* then and there with the sword aforesaid, in and upon the aforesaid upper part of the belly of him the aforesaid *Edward Wilson*, near his breast and middle of his body, one mortal wound of the breadth of two inches and of the depth of five inches, of which mortal wound indeed the said *Edward Wilson* then and there instantly died; and so the aforesaid *John Law* then and there, that is to say, on the said ninth day of *April* in the sixth year aforesaid, about the first hour after mid-day of the same day, at the aforesaid parish of *Saint Giles in the Fields* in the county of *Middlesex* aforesaid, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought hath slain, killed and murdered the aforesaid *Edward Wilson*, against the peace of the said lord the now king and lady the now queen, their crown and dignity; and as soon as the same felon, the said *John Law*, had done the felony and murder aforesaid, he the same *John Law* fled, and the aforesaid *Robert Wilson*, him the said *John Law* freshly pursued from vill to vill unto the four nearest villis, and further until, &c. And if the said felon will deny the felony and murder aforesaid laid to him in form aforesaid, the said *Robert Wilson* is ready to prove this against him, as the court, &c.

And the aforesaid *John Law* in his proper person comes and prays *Oyer* of the writ of appeal aforesaid, and the return of the same writ; and they are read to him in these words, (to wit) *William and Mary*, by the grace of God, of *England, Scotland, France and Ireland* king and queen, defenders of the faith, &c. To the sheriff of *Middlesex*, greet- ing: forasmuch as *Robert Wilson*, gent. the brother and heir

Defendant
craves *Oyer* of
the writ and
the return.

The writ of
appeal.

of

of *Edward Wilson*, gent. hath made you secure of prosecuting his clamour by *Charles Williams* of the parish of *Saint James* within the liberty of *Westminster* in your county, tapestry-maker, and *John Wheeler* of the parish of *Saint Mary le Savoy* in your county, gent. Therefore we command you, that you attach *John Law* late of the parish of *Saint Giles in the Fields* in your county, gent. by his body, according to the law and custom of our kingdom of *England*, so that you may have him before us from the day of *Easter* in one month wheresoever we shall then be in *England*, to answer to the aforesaid *Robert Wilson* concerning the death of the said *Edward Wilson*, formerly his brother, whereof he appealeth him; and have you then there this writ. Witness ourselves at *Westminster* the 19th day of *April* in the sixth year of our reign. *Martin*. By virtue of this writ to me directed, I have caused to be attached the within named *John Law* by his body, whose body indeed I have ready before the lord the king and lady the queen, wheresoever, &c. as it is within commanded to me. The answer of *Thomas Abney*, knt. and *William Hedges*, knt. sheriff; which being read and heard, the aforesaid *John Law* defends the force and injury when, &c. and all the felony, and whatsoever, &c. and prays judgment of the original writ and declaration aforesaid, because he saith that that writ, and the return thereof, and also the declaration aforesaid thereupon, are not sufficient in law to compel him the said *John Law* to answer thereunto; and that he to the writ aforesaid as aforesaid returned, or to the declaration aforesaid as aforesaid declared, hath no necessity, nor is he bound by the law of the land to answer; and this he is ready to verify; wherefore he prays judgment of the writ and return, and of the declaration aforesaid, and that the said writ may be quashed, &c. And as to the felony and murder aforesaid, he the said *John Law* saith that he is not guilty thereof, and of good and evil he puts himself upon the country, and the aforesaid *Robert Wilson* likewise, &c.

The return.

Demurrer to the writ and count.

Not guilty to the murder.

Issue.

Joinder in demurrer as to the writ and return.

And the aforesaid *Robert Wilson*, as to the aforesaid plea of the said *John Law* above to the writ of him the said *Robert Wilson* aforesaid in form aforesaid pleaded, saith, that the said writ, and the return thereof, and the matter in the same contained, are good and sufficient in law to compel the said *John Law* to answer thereunto; and this he is ready to verify: wherefore since the said *John Law* hath nothing alledged or assigned in which the said writ, or the return thereof, is bad, vicious or defective, he the said *Robert Wilson* prays judgment, and that the same writ, and the said return thereof, may be adjudged good and sufficient

sufficient in law, &c. And as to the said demurrer in law, or the plea of the aforesaid *John Law* to the declaration of the said *Robert Wilson* aforesaid above in form aforesaid pleaded, he the said *Robert Wilson* saith, that the said declaration, and the matter in the same contained so as aforesaid declared, are good and sufficient in law, as well to have and maintain in his appeal aforesaid against the said *John Law*, as to compel the same *John Law* to answer thereunto; which declaration indeed, and the matter in the same contained, he the said *Robert Wilson* is ready to verify and prove, as the court, &c. And because the said *John Law* doth not answer to that plea, nor hath hitherto in any manner denied it, he the said *Robert Wilson* prays judgment, and that the said *John Law* may be convicted of the felony and murder aforesaid, &c.

Joinder in demurrer as to the declaration.

Hartop against Holt. 1 Ld. Raym. 97.

WILLIAM the third, by the grace of God, of England, Scotland, France and Ireland king, defender of the faith, &c. To our right trusty and well-beloved Sir *John Holt*, knt. our chief justice, assigned to hold pleas in our court before us, greeting: whereas in the statute set forth in the parliament of lady *Elizabeth*, late queen of England, holden at *Westminster* the twenty-third day of *November* in the 27th year of her reign, it was enacted by the authority of the same parliament, that where any judgment should at any time thereafter be given in the court of king's-bench in any suit or action of debt, detinue, covenant, account, action upon the case, *ejectione firme*, or trespass, first commenced, or to be first commenced there, (other than such only where the queen's majesty should be party) the party, plaintiff or defendant against whom such judgment should be given, might at his election sue forth out of the court of chancery a special writ of error; to be devised in the said court of chancery, directed to the chief justice of the said court of the king's-bench for the time being, commanding him to cause the said record, and all things concerning the said judgment, to be brought before the justices of the common bench and the barons of the exchequer into the exchequer chamber, there to be examined by the said justices of the common bench and barons aforesaid; which said justices of the common bench, and such barons of the exchequer as are of the degree of the coif, or six of them at the least, by virtue of that statute should thereupon have full power and authority to

A writ of error in the exchequer chamber, as well on the judgment as in the awarding execution.

examine all such errors as should be assigned or found in or upon any such judgment, and thereupon to reverse or affirm the said judgment, as the law should require, other than for errors to be assigned or found for or concerning the jurisdiction of the said court of king's bench, or for any want of form in any writ, return, plaint, bill, declaration, or other pleading, process, verdict or proceeding whatsoever; and after that the judgment should be affirmed or reversed, the record, and all things concerning the same, should be brought back into the said court of king's bench, that such further proceeding should be had thereupon, as well for execution as otherwise should appertain, as in the said statute, among other things, more fully appears: and forasmuch as in the record and judgment, and also in the giving of judgment in a plaint which was in our court before us by bill, between *Thomas Hartop* and *Richard Holt*, otherwise called *Richard Holt of London*, mercer, as well of a debt of 335*l.* which the said *Thomas* demanded of the said *Richard*, as of 43*s.* for his damages which he sustained by occasion of the detaining of that debt, and also in the awarding of execution of the judgment aforesaid, upon our writ of *scire facias* issuing out of our same court for the said *Thomas* against the said *Richard* of the debt and damages aforesaid, manifest error hath intervened, as by the complaint of the said *Richard* we are informed; which said error in no manner concerneth us, or the jurisdiction of our said court of king's bench, or the want of form in any writ, return, plaint, bill, declaration, or other pleading, process, verdict or proceeding whatsoever, as we are informed: we willing that the said error, if any be, be corrected, according to the form of the statute aforesaid, and full and speedy justice done to the said parties in this behalf, do command you, that if judgment be given, and an award of execution of the same judgment upon our writ of *scire facias* be adjudged, that as well the record and proceedings aforesaid, as all things concerning the same, before the said justices of the common bench and barons of our exchequer aforesaid, in the exchequer chamber aforesaid, on *Saturday*, to wit, the 2d day of *May* next coming, you cause to be brought before our said justices and barons, that they having examined the record and process aforesaid, may cause further to be done thereupon that which of right and according to the law and custom of our kingdom of *England* shall be meet to be done. Witness ourself at *Westminster* the 12th day of *February* in the 7th year of our reign.

Pleas

Pleas before the Lord the King and Lady the Queen at Westminster of the Term of Saint Hilary in the fourth and fifth Years of the Reign of the Lord William and Lady Mary, now King and Queen of England, &c. Roll 272.

Walter against Rumball. 1 Ld. Raym. 53.

Southamptonshire, **B**E it remembered. that heretofore, to (to wit) wit, on *Saturday* next after eight days of Saint *Martin* in the term of Saint *Michael* in the 3d year of the reign of the lord *William* and lady *Mary*, now king and queen of *England*, &c. before the said lord the king and lady the queen at *Westminster* came *William Walter Clerk* by *Richard Hill* his attorney, and brought here into the court of the said lord the king and lady the queen then there his certain bill against *Edmund Rumball*, in custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, (to wit) *Southamptonshire*, (to wit) *William Walter Clerk* complains of *Edmund Rumball*, in the custody of the marshal of the *Marshalsea* of the lord the king and lady the queen, being before the king and queen themselves, for that (to wit) that whereas the said *William* on the first day of *November* in the third year of the reign of the lord *William* and lady *Mary*, now king and queen of *England*, &c. at *Andover* in the county aforesaid, was possessed of the cattle, goods and chattels following, that is to say, of six swine, twelve pigs, three cows, two bullocks, four horses, one hundred and two sheep, of the price of 100 *l.* of lawful money of *England*, and of two stacks of hay, one stack of barley, one stack of peas and one stack of wheat, to the value of one hundred pounds of lawful money of *England*, as of his own proper cattle, goods and chattels; and being so possessed thereof, the said *William* afterwards, to wit, on the tenth day of *November* in the third year aforesaid, at *Andover* aforesaid in the said county, casually lost the cattle, goods and chattels aforesaid, out of his hands and possession; which said cattle, goods and chattels so lost, afterwards in the day, year, and at the place last aforesaid came to the hands and possession of him the said *Edmund*, by finding: nevertheless the said *Edmund* knowing the cattle, goods and chattels aforesaid to be the proper cattle, goods and

Trover for
cattle, goods
and chattels.

and chattels of him the said *William*, and to him the said *William* of right to belong and appertain, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *William* in this behalf, hath not yet delivered the cattle, goods and chattels aforesaid to him the said *William*, (although often requested, &c.) but the said *Edmund* afterwards, to wit, on the twelfth day of *November* in the third year aforesaid, at *Andover* aforesaid, converted and disposed of the said cattle, goods and chattels to his own proper use and profit; whereupon the said *William* saith that he is injured, and hath damage to the value of 200*l.* and thereupon he brings his suit, &c.

Impar lance.

Not guilty
pleaded.

And now at this day, to wit, *Monday* next after eight days of *Saint Hilary* in this same term, until which day the said *Edmund* had leave to imparl to the bill aforesaid, and then to answer, &c. before the lord the king and lady the queen at *Westminster* cometh as well the said *William* by his attorney aforesaid, as the said *Edmund* by *Henry Curle* his attorney: and the said *Edmund* defends the force and injury when, &c. and saith that he is not guilty thereof; and of this he puts himself upon the country; and the said *William* thereupon likewise, &c. Therefore let a jury thereof come before the lord the king and lady the queen at *Westminster* on *Monday* next after eight days of the purification of the blessed *Virgin Mary*, and who neither, &c. to take cognisance, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards the process between the parties aforesaid is thereupon continued of the plea aforesaid by respiting the jury thereof between them before the lord the king and lady the queen at *Westminster* until *Wednesday* next after fifteen days of *Easter* from thence next following, unless the justices of the lord the king and lady the queen, assigned to take the assizes in the county aforesaid, shall before come on *Tuesday* the 11th day of *April* at the castle of *Winchester* in the county aforesaid, by form of the statute, &c. for want of jurors, &c. At which day before the lord the king and lady the queen at *Westminster* come the parties aforesaid by their said attornies, and the said justices of the said lord the king and lady the queen, before whom, &c. sent here their record before them had in these words, (to wit) Afterwards on the day and at the place within contained, before *William Dolben*, knt. one of the justices of the lord the king and lady the queen, assigned to hold pleas before the king and queen themselves, and *John Powell*, knt. one of the justices of the said lord the king and lady the queen of the bench, justices of the said lord the king and lady the queen, assigned to take the assizes in the county

Postea.

county of *Southampton*, by form of the statute, &c. comes the within named *William Walter Clerk* by his attorney within contained, and the within named *Edmund Rumball*, although solemnly called, did not come, but made default; therefore the jury whereof mention is within made, is taken against him by default; and the jurors of that jury being called, some of them, to wit, *John Hale*, *Francis Kent* (and eight others) came, and are sworn upon that jury; and because the rest of the jurors of the same jury did not appear, therefore others of the by-standers, by the sheriff of the county aforesaid, being chosen for this purpose, at the request of him the said *William Walter*, and by the command of the justices aforesaid, are newly appointed, whose names are affixed in the panel within written, according to the form of the statute in such case lately made and provided: and the jurors so newly appointed, that is to say, *Richard Hawes* and *Joseph Watts* being called likewise come, who being chosen, tried and sworn to speak the truth concerning the matters within contained, together with the other jurors aforesaid, being impanelled and sworn to this purpose, say upon their oath that one *John Smith*, esq; on the 16th day of *October* in the 28th year of the reign of the lord *Charles* the second, late king of *England*, &c. was seised in his demesne as of fee of and in one barn and 200 acres of land, with the appurtenances, lying and being in the fore-
rest of *Chute*, one part thereof being within the hundred of *Kinnerley* in the county of *Wilts*, and the other part thereof within the hundred of *Andover without* in the county of *Southampton*; and being so seised thereof, afterwards, to wit, on the 17th day of *October* in that same year, by his certain indenture sealed with his seal, and to the jury now shewn here in evidence, bearing date the same 16th day of *October*, demised the tenements aforesaid, with the appurtenances, to one *William Walter*, the father of the said *William Walter* the now plaintiff, for the term of twenty-one years, from thence next following and fully to be compleat and ended; yielding and paying therefore during the same term to the said *John Smith*, his heirs and assigns, the yearly rent of 43*l.* and 10*s.* of lawful money of *England*, yearly and every year, at the feast of the annunciation of the blessed virgin *Mary* and Saint *Michael* the archangel, by equal portions; and that by virtue of the said demise the said *William Walter* the father afterwards, to wit, the same day and year entered into the said demised premises, and was possessed thereof for and during the term aforesaid, the reversion thereof to the said *John Smith* then and yet belonging; and that 46*l.* and 8*d.* of the rent aforesaid, on the 21st day of *October* in the year of our Lord 1691 were

Tales de circum-
stantibus.

Special verdict.

Seisin in fee,

and demised by
indenture:

Lessee entered,
and was posses-
sed.

Rent in arrear. And defendant, by order of the landlord's bailiff, (the landlord being beyond seas) distrained for the rent arrear upon the lands lett in 2 hundreds.

The act for distresses for rent.

No replevin sued out.

The 5 days expired.

The defendant with a constable caused the goods to be appraised,

and afterwards sold the goods.

The goods not of the value of the rent.

were in arrear and unpaid to the said *John Smith*, for which the said *Edmund Rumball* on the said 21st day of *October*, by the command and order of one *Henry Garnons*, then and continually afterwards until this time being the bailiff of the said *John Smith*, he the said *John Smith* being then and continually afterwards until this time in parts beyond the seas, distrained the cattle, goods and chattels within specified in the declaration within written, then being the cattle, goods and chattels of him the said *William Walter* the now plaintiff, being then levant and couchant upon the said demised premises, that is to say, one part thereof upon that part of the said demised premises which lies within the said hundred of *Kinnerley* in the county of *Wilts*, and the other part thereof upon the other part of the said demised premises which lies within the said hundred of *Andover without* in the county of *Southampton*, for the rent aforesaid, so being in arrear; and the same day and year gave notice thereof, and of the cause of the said distress, to him the said *William*, according to the form of the statute in such case lately made and provided, intituled, an act for enabling the sale of goods distrained for rent, in case the rent be not paid in a reasonable time. And the said jurors upon their oath aforesaid further say, that at any time after the distress aforesaid, the said *William Walter* the now plaintiff hath not brought or prosecuted any writ to replevy the cattle, goods and chattels aforesaid, wherefore after five days had been elapsed and expired after the said notice to him the said *William*, and before the exhibiting the bill of him the said *William*, to wit, on the 2d day of *November* in the year of our Lord 1691 above said, the said *Edmund Rumball*, together with the constable of the hundred of *Kinnerley* aforesaid for the time then being, caused the cattle, goods and chattels within mentioned in the declaration aforesaid within the hundred of *Kinnerley* aforesaid, to be appraised by two appraisers, sworn within that hundred to appraise the same truly according to the best of their understanding, by the constable of the same hundred of *Kinnerley* in the presence of the constable of the hundred of *Andover without* aforesaid: and that after the said appraisement of the cattle, goods and chattels aforesaid, and before the exhibiting the bill of him the said *William Walter*, the said *Edmund Rumball* sold a certain parcel of the cattle, goods and chattels aforesaid, to certain persons unknown to the jurors aforesaid. But the said jurors upon their said oath further say, that the said cattle, goods and chattels so sold, were not of the value of the rent aforesaid so being in arrear as aforesaid, nor were sold for the value of that rent so being in arrear. And the jurors aforesaid upon their said oath further

further say, that the cattle, goods and chattels aforesaid, were appraised in manner aforesaid, and not otherwise, or in any other manner: and that the said *Edmund Rumball* took and carried away the rest of the said cattle, goods and chattels not sold after the appraisement aforesaid, to be sold when there should be an opportunity, and yet detains in his custody those cattle, goods and chattels: but whether upon the whole matter aforesaid, by the jurors aforesaid in manner and form aforesaid found, the said *Edmund Rumball* be guilty of the premisses within laid to his charge by the said declaration, the said jurors are wholly ignorant, and pray thereupon the advice of the court of the lord the king and lady the queen now here: and if upon the said matter it shall seem to the court here that the said *Edmund Rumball* be guilty of the premisses within laid to his charge by the said declaration, then the said jurors say upon their oath, that the said *Edmund Rumball* is guilty thereof, as the said *William Walter* within thereof complains against him; and then they assess the damages of him the said *William Walter*, by occasion thereof, besides his costs and charges by him laid out about his suit in this behalf, to 86 *l.* and for those costs and charges to 40 *s.* and if upon the whole matter aforesaid, by the jurors aforesaid in manner and form aforesaid found, it shall seem to the court here that the said *Edmund Rumball* is not guilty of the premisses within laid to his charge by the declaration aforesaid, then the said jurors upon their said oath say, that the said *Edmund Rumball* is not guilty of the premisses within laid to his charge by the declaration aforesaid, as the said *Edmund Rumball* within in pleading thereupon hath alledged. And because, &c.

And the rest
unfold he hath
in his hands.

Dalston, Bart. against Janfon. 1 *Ld. Raym.*
58.

London, *JOHN Dalston*, knight and baronet, complains (to wit) *J* of *Joshua Janfon*, a common carrier, in custody of the marshal of the *Marshalsea* of the lord the king, being before the king himself, for that, to wit, that whereas the aforesaid *Joshua* on the 16th day of *March* in the year of our Lord 1693, and long before and always afterwards hath been, and now is, a common carrier of goods and chattels, and for his profit hath been accustomed to carry the goods and chattels of all persons whatsoever requiring the carriage thereof from *Wakefield* in the county of *York* unto *London*, and from *London* aforesaid unto *Wakefield* aforesaid, for all the said time, for a reward to be therefore had.

Count against a
common carrier.

had. And whereas by the law and custom of this kingdom of *England*, every common carrier of goods and chattels, who receives the goods and chattels of any person so to be carried, is bound to keep and carry the same without subtraction and loss, so that by the default of such common carrier, or his servants, damages may not in any manner come to pass. And whereas the said *John* on the same 16th day of *March* in the year of our Lord 1693 above said at *London* above said, that is to say, in the parish of the blessed *Mary of the Arches* in the ward of *Cheape*, was possessed of the goods and chattels following, that is to say, of one deal box, and one hundred pieces of gold coin, called guineas, of lawful money of *England* as of his own proper goods, and chattels; and the above said *John* being thereof so possessed, on the same 16th day of *March* in the year of our Lord 1693 above said at *London* above said, to wit, in the parish and ward above said, he the said *John* then and there delivered the box above said, with the said one hundred pieces of gold coin, called guineas, to the above said *Josbua* to carry the same safely and securely from *London* above said unto *Wakefield* above said for a reward; and the above said *Josbua* then and there had and received the said box and the said 100 pieces of gold coin, called guineas, being therein to be carried and delivered in form above said: nevertheless the said *Josbua* at any time afterwards until now hath not delivered the box above said, with the said 100 pieces of gold being therein, to him the said *John*: but the box above said, and the said 100 pieces of gold coin being therein, afterwards, to wit, on the 17th day of *March* in the year of our Lord 1693 above said, at *London* above said in the parish and ward above said, for default of the good keeping of him the said *Josbua* were lost. And also whereas on the 16th day of *March* in the year of our Lord 1693 above said, at *London* above said, to wit, in the parish and ward above said, the said *John* was possessed of other goods and chattels following, to wit, of one deal box, and 100 pieces of gold coin, called guineas, of lawful money of *England*, as of his own proper goods and chattels; and being so possessed thereof, he the said *John* afterwards, to wit, on the same 16th day of *March* in the year of our Lord 1693 above said, at *London* above said in the parish and ward above said, casually lost those goods and chattels out of his hands and possession; which said goods and chattels afterwards, to wit, the same 16th day of *March* in the year of our Lord 1693 above said, in the parish and ward above said, came to the hands and possession of the above said *Josbua*, by finding: nevertheless the

Count in trover.

the said *Josbua* knowing the said goods and chattels last mentioned to be the proper goods and chattels of the aforesaid *John*, and of right to belong and appertain to him the said *John*, yet contriving and fraudulently intending craftily and subtilly to deceive and defraud the aforesaid *John* in this behalf, hath not yet delivered the said goods and chattels last mentioned to him the said *John*, altho' often requested, &c. but the goods and chattels last mentioned afterwards, to wit, on the 17th day of *March* in the year of our Lord 1693 abovesaid, at *London* aforesaid in the parish and ward aforesaid, converted and disposed of to the proper use and benefit of him the said *Josbua*, to the damage of him the said *John* of 150 *l.* and thereupon he brings suit, &c.

General issue Not guilty.

Fletcher against Ingram. 1 *Ld. Raym.* 69.

Staffordshire, *JOSEPH Ingram* and *John Hale* were Replevin.

(to wit.) *J* summoned to answer to *James Fletcher* of a plea, wherefore they took one mare of him the said *James*, and unjustly detained her, against gages and pledges, &c. And whereupon the said *James* by *John Lilly* his attorney complains, that the aforesaid *Joseph* and *John* on the 20th day of *February* in the seventh year of the reign of the lord *William* the third, now king of *England*, &c. at *Shrewston* in the county aforesaid, in a certain place there called *The Lane*, took the mare aforesaid of him the said *James*, and unjustly detained her, against gages and pledges until, &c. and whereupon the said *James* saith that he is injured, and hath damage to the value of 20 *l.* and thereupon he brings suit, &c.

And the aforesaid *Joseph* and *John Hale* by *Thomas Callow* their attorney come and defend the force and injury when, &c. and as bailiffs of *Rowland Fryth*, gent. well acknowledge the taking of the mare aforesaid, in the place in which &c. and justly, &c. because they say, that the same place in which the taking of the mare aforesaid is supposed to be done, containeth, and at the said time when the same taking of the mare is supposed to be done, did contain in itself one acre of land with the appurtenances, in *Shrewston* aforesaid; which said town of *Shrewston* is, and from the said time, when, &c. and also from time whereof the memory of man is not to the contrary, was within the manor of *Shrewston* with the appurtenances, in the county of *Stafford* aforesaid, of which said manor, with the appurtenances, the aforesaid *Rowland* is, and at the said time; when, &c. and long before was seised in his demesne as of fee; and the said *Rowland*, and all

Defendants make cognizance as bailiffs of the lord of the manor.

Prescription to hold a court-leet.

Prescription for the homage to choose a constable,

who is to take the office and an oath for the due execution of it, under a penalty to be imposed by the homage.

That the plaintiff was chosen constable by the homage.

those whose estate he hath in the same manor, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, and been accustomed to have a court-leet or view of frankpledge of the same manor, and whatsoever belongeth to the view of frankpledge, of all the inhabitants and residents within that manor, before his steward of the same court for the time being, in every year within the month next after the feast of Saint *Michael* the archangel, to be holden at that manor yearly, as to the said manor, with the appurtenances, belonging: and they the said *Joseph* and *John* further say, that within the manor aforesaid there is had, and from time whereof the memory of man is not to the contrary, there hath been had a certain custom, that the jurors charged and sworn to inquire of, and present those things which belong to the court-leet and view of frankpledge aforesaid, at the court of view of frankpledge of the manor aforesaid, holden at that manor within the month next after the feast of Saint *Michael* the archangel yearly, have chosen, and for all the time aforesaid have been accustomed to choose one fit man of the inhabitants within the manor aforesaid, to be constable of the constablewick of *Shrewston* aforesaid, to serve in that office for one year, which said man so chosen took upon himself that office, and for all the time aforesaid was used and accustomed to take it, and hath taken and been accustomed to take an oath for the due execution of that office, under a reasonable pain, for the time aforesaid, by the jurors aforesaid at such court-leet and view of frankpledge in that behalf imposed. And the said *Joseph* and *John* further say, that the aforesaid *Rowland* being lord of the manor aforesaid, with the appurtenances, and being seised of the same in form aforesaid, at the court-leet or view of frankpledge of that manor, holden at the said manor within the month next after the feast of Saint *Michael* the archangel, to wit, on the ninth day of *October* in the fifth year of the reign of the lord *William* the third the now king, and of the lady *Mary*, late queen of *England*, &c. before *Henry Frith*, gent. then steward of that court of him the said *Rowland*, the aforesaid *James Fletcher* then and long before being an inhabitant within the manor aforesaid, to wit, at *Shrewston* aforesaid, and being a fit man to be constable of the aforesaid constablewick of *Shrewston* aforesaid, by *Edward Thornton*, *Thomas Grace*, *John Cooke*, *Joseph Alsop*, *James Standley*, *William Milner*, *William Ridding*, *Michael Wiat*, *Thomas Salt*, *James Milner*, *John Silvester*, *John Adcock* and *John Dickeson*, honest and lawful men and inhabitants within the manor aforesaid, and then and there in the same court sworn and charged to inquire

inquire and present those things which to the court-leet and view of frankpledge did belong, in due manner and according to the custom aforesaid, was chosen to be constable of the constablewick of *Shewston* aforesaid; to serve in that office for one year then next following: and the said jurors then and there in the same court did order that the said *James* should make his oath for the due execution of his office aforesaid, under the pain of forfeiting 40s. whereof the aforesaid *James Fletcher* immediately afterward, to wit, the same day and year had notice, yet the said *James* hath not made his oath for the due execution of the office of constable aforesaid; nor hath executed or taken upon himself that office, but he to do those things then, and often afterwards, there, absolutely refused, by which afterwards and before the time when, &c. to wit, at the court-leet or view of frankpledge of the manor aforesaid of the said *Rowland* at that manor, within the month next after the feast of Saint *Michael* the archangel, to wit, on the 11th day of *October* in the 6th year of the reign of the said lord the king and lady *Mary*, late queen of *England*, holden before the said *Henry Priith*, then steward of him the said *Rowland* of that court, by *Edward Thornton*, &c. honest and lawful men, then inhabitants within the manor aforesaid, then and there in the same court sworn and charged to inquire and present those things which to the court-leet or view of frankpledge aforesaid did belong, it was presented, that the aforesaid *James Fletcher*, for that he was duly chosen constable of the constablewick of *Shewston* aforesaid, at the last leet holden for the manor aforesaid, and under the pain of 40s. upon him imposed, he was ordered to take upon himself and execute that office, and to make his oath in form aforesaid, for the due execution of the said office, which things, or any thing thereof, he hath not done, therefore he hath forfeited to the lord of the manor aforesaid the said 40s. for the pain aforesaid, then to be paid to the lord of the manor aforesaid, as by the record thereof in the power of the said steward of the court of the manor of him the said *Rowland* aforesaid at that manor remaining, more fully appears: and because the said 40s. for the pain aforesaid to him the said *Rowland*, being lord of the manor aforesaid, as before is set forth, at the said time when, &c. was in arrear, and not paid, they the said *Joseph* and *Jahn*, as bailiffs of him the said *Rowland*, well acknowledge the taking of the mare aforesaid in the said place in which, &c. and justly, &c. for the said 40s. for the pain or amercement aforesaid so being in arrear, and not paid to the said *Rowland*, and within the manor aforesaid, &c.

That the plaintiff hath refused to take on him the office, and the oath.

Plaintiff is fined 40s.

For payment of which defendants took the mare.

Demurrer to
the cognizance.

And the aforesaid *James* saith, that by any thing by the aforesaid *Joseph* and *John* above in the cognizance aforesaid in pleading alledged, they the said *Joseph* and *John* ought not to acknowledge the taking of the mare aforesaid in the said place, &c. to be just, because he saith, that the plea aforesaid by them the said *Joseph* and *John* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law for the acknowledging the taking of the mare aforesaid in the said place in which, &c. to be just, and that he, to that cognizance in manner and form above made and pleaded, hath no necessity, nor is he bound by the law of the land to answer; and this he is ready to verify: wherefore for want of a sufficient plea in this behalf, he the said *James* prays judgment and his damages, by occasion of the taking and unjustly detaining of the mare aforesaid, to be adjudged to him, &c.

Joinder in
demurrer.

And the aforesaid *Joseph* and *John* say, that the plea aforesaid by them the said *Joseph* and *John* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law for them the said *Joseph* and *John* to acknowledge the taking of the said mare in the said place in which, &c. to be just; which said plea, and the matter in the same contained, they the said *Joseph* and *John* are ready to verify and prove, as the court, &c. And because the said *James* to that cognizance hath not pleaded or answered, nor the same hath hitherto in any manner denied, they the said *Joseph* and *John* pray judgment, and a return of the mare aforesaid, together with their damages, costs and charges, according to the form of the statute in such case made and provided, to be adjudged to them, &c. And because the court of the said lord the king now here is not yet advised of the giving of their judgment of and upon the premisses, day is thereupon given to the parties aforesaid, before the lord the king from the day of ———— wheresoever, &c. to hear their judgment of and upon the premisses aforesaid, for that the court of the said lord the king now here are not yet advised, &c.

*Curia advisare
vult.*

Trinity Term in the seventh Year of King William
the Third. Roll 1703.

Laughton against Ward. 1 Ld. Raym. 75. : Re-
ported by the Name of. Lawton against Ward.

Winford.

Yorkshire, **T**HOMAS Ward late of Tickhill in the county (to wit) afore said, yeoman, was attached to answer to William Laughton, gent. of a plea of trespass upon the case, &c. And whereupon the said William by A. B. his attorney complains, that whereas on the 10th day of May in the 6th year of the reign of the lord William now king, and lady Mary the second, late queen of England, &c. and long before, and continually afterward until now, he the said William Laughton was seised, and yet is seised of, and in one close of land, with the appurtenances, called Langdale, lying and being in the parish of Tickhill afore said, and of one close of meadow, with the appurtenances, called Goody Ing, lying and being in the parish afore said, and next adjoining to the said close called Langdale, in his demesne as of fee, and he the said William Laughton, and all those whose estate he the said William Laughton now hath, and for all that time had of and in the tenements afore said, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, and have been used and accustomed to have a certain way, as well a footway as an horseway, and for their carts and carriages from the king's common highway in the parish of Tickhill afore said, which said king's way leads between the towns of Tickhill afore said and Wadworth in the county afore said, in, by and through a certain place called Badley Well Lane, lying within the parish of Tickhill afore said, and so unto and into a certain other place called Langdale's Lane, and from thence unto and into the said close called Langdale, and so backwards from that close unto the king's way afore said, every year, at all times of the year through the way afore said, in form afore said described, as to his tenements afore said, with the appurtenances, belonging: nevertheless the said Thomas not being ignorant of the premises, but contriving and fraudulently intending him the said William Laughton in this behalf unjustly to ag-
grieve

Action upon the
case for disturb-
ing plaintiff in
the use of his
way.

grieve and to hinder, and, as much as he could, to deprive him the said *William Laughton* of the use of his way aforesaid, on the said 10th day of *May* in the 6th year aforesaid, with his carts and carriages, to wit, with the wheels thereof, the way aforesaid in the said place called *Badfley Well Lane*, in-somuch spoiled and damaged, that the said way there became of no use to him the said *William Laughton*, to the damage of him the said *William Laughton* of 20*l.* and thereupon he brings suit, &c.

Justification for
a way through
the way in the
declaration.

And the said *Thomas* by *Robert Vesey* his attorney comes and defends the force and injury when, &c. and saith, that the said *William* ought not to have his said action against him, because protesting that the declaration aforesaid, and the matter in the same contained, are not sufficient in law to have the said action of the said *William* to be maintained against him the said *Thomas*: nevertheless for plea the said *Thomas* saith, that one *William Vesey*, gent. on the said 10th day of *May* in the 6th year aforesaid, and long before and continually afterwards until now was seised, and yet is seised, of and in one close of land called *Badfley Well Close*, with the appurtenances, in the parish of *Tickhill* aforesaid, in his demesne as of fee; and that he the said *William Vesey*, and all those whose estate he hath, and for that time had, of and in his close aforesaid, with the appurtenances, from time whereof the memory of man is not to the contrary, have used, and had, and have been accustomed to use and have a certain way, as well a horseway, as a footway, and for their carts and carriages from the said king's common way in *Tickhill* aforesaid, in the declaration aforesaid above specified, in, by, and through the said place called *Badfley Well Lane*, and from thence unto, and into the said close of him the said *William Vesey* called *Badfley Well Close*, and so backward from the same close called *Badfley Well Close*, through the same way unto the king's common way aforesaid, in *Tickhill* aforesaid in every year, at all times of the year, at his will and pleasure; by which he the said *Thomas*, as servant of the aforesaid *William Vesey*, and by his command, on the said 10th day of *May* in the 6th year aforesaid, with the carts and carriages of him the said *William Vesey*, from the king's common way aforesaid, in, by, and through the said place called *Badfley Well Close*, and so back again, went, returned and passed by the way aforesaid in form aforesaid described, using that way, as it was well lawful for him to do; and so by going, returning and passing, in, by, and through the same way he the said *Thomas*, the soil of that way in the said place called *Badfley Well Lane*, with the wheels of those carts and carriages a little subverted, doing as little damage as he could

could in that way, which are the same spoiling and damaging of the aforesaid way in the said place called *Badfley Well Lane*, whereof the aforesaid *William Laughton* above himself now complains; and this he is ready to verify: wherefore he prays judgment if the aforesaid *William Laughton* ought to have his said action against him the said *Thomas*, &c.

And the said *William Laughton* saith, that he by any thing before alledged ought not to be barred from having his said action thereof against the said *Thomas*, because he saith, that well and true it is that the said *William Vesey*, gent. on the said 10th day of *May* in the 6th year above said, and long before, and continually afterwards until now was seised, and yet is seised of, and in the said close of land called *Badfley Well Close*, with the appurtenances, in the parish of *Tickhill* aforesaid, in his demesne as of fee; and that he the said *William Vesey*, and all those whose estate he hath, and for the time aforesaid had of and in the close aforesaid, with the appurtenances, from time whereof the memory of man is not to the contrary, have used and had, and have been accustomed to use and have a certain way, as well a horseway as a footway, for his carts and carriages, from the said king's common way in *Tickhill* aforesaid, in the declaration above specified, in, by, and through the said place called *Badfley Well Lane*, and from thence unto, and into the said close of him the said *William Vesey*, called *Badfley Well Close*, and so backward from the said close called *Badfley Well Close*, by the same way unto the king's common way aforesaid, at *Tickhill* aforesaid in every year, at all times of the year, at his will and pleasure, as the said *Thomas* above in pleading thereof hath alledged: but he the said *William Laughton* further saith, that the said *Thomas* in using the way aforesaid with his carts and carriages aforesaid from the king's common way aforesaid, in, by, and through the said place called *Badfley Well Lane*, and from thence unto, and into the said close called *Badfley Well Close*, and beyond the said close called *Badfley Well Close*, into a certain other close of him the said *William Vesey* there called *Warton Langdalls* and so backward from the said close called *Warton Langdalls* unto the said close called *Badfley Well Close* aforesaid, and so unto the king's way aforesaid through the way aforesaid, in form aforesaid described, unjustly and contrary to the form of the prescription aforesaid, went, returned and journeyed in going to the said close called *Warton Langdalls*, and from thence by returning with his carts and carriages aforesaid in form aforesaid, and by the way aforesaid, to wit, with the wheels of his carts and carriages aforesaid, the way aforesaid in the said place called *Badfley Well Lane*, in-so-much spoiled and damaged that the said way there became of no use

Replication confesses the way of defendant.

But that defendant went beyond the close to which he prescribed to have a way.

use to him the said *William Laughton*, as he the said *William Laughton* above hath thereof declared against him; and this he is ready to verify: wherefore he prays judgment and his damages, by occasion of the premises, to be adjudged to him, &c.

Rejoinder al-
leges no new
matter, but re-
lies on the mat-
ter before.

And the said *Thomas*, for that the said *William Laughton* above hath acknowledged that the said *William Vesey*, and all those whose estate he hath, and had as before is set forth, of, and in his close aforesaid called *Badfley Well Close*, with the appurtenances, from time whereof the memory of man is not to the contrary, have used, and had, and have been accustomed to use and have the way aforesaid leading between the king's common way aforesaid, and that close, by, and through the said place called *Badfley Well Lane*, in every year, at all times of the year, at his will and pleasure, as the said *Thomas* above hath alledged; and to the way aforesaid by and through the said place called *Badfley Well Lane*, doth not belong to the said tenements of the said *William Laughton* only, as he hath above supposed: and for that it was well lawful, and is lawful for him the said *William Vesey*, being in the said close called *Badfley Well Close*, from thence into his said other close called *Warton Langdalls*, and backward from thence into the said close called *Badfley Well Close*, to go and return at his will and pleasure, and this without any damage whatsoever to be done to any person thereby, as before prays judgment, &c.

Demurter, and joinder in demurrer.

Brownlow against Hewley. 1 Ld. Raym. 82.

Debt for rent
for an executor
of an executor
against assignee
of the whole
term.

JOHN Hewley late of the city of *York* in the county of the city of *York*, knt. was summoned to answer to *John Brownlowe*, bart. and *William Brownlowe*, esq; executors of the will of *John Brownlowe*, bart. deceased, late executor of the will of *Richard Brownlowe*, esq; of a plea, that he render to them 550*l.* which he unjustly detains from them. And whereupon they the said *J. B.* and *W. B.* the now plaintiffs, by *B. C.* their attorney say, that whereas one *John Walter*, knt. *James Fullerton* and *Thomas Trevor*, knt. on the first day of *September* in the 3d year of the reign of the lord *Charles* the first, late of *England*, &c. were possessed (among other things) of a certain park called *H. Park* in the parish of *K.* in the county of *York*, for the term of 99 years, beginning from the feast of Saint *Michael* the archangel in the 14th year of the reign of the lord *James* the first, late king of *England*, &c. and being so possessed thereof, they the said

J. W.

J. W. J. F. and *T. T.* afterwards, to wit, on the said first day of *September* in the third year of the reign of the lord the late king *Charles* the first abovesaid, at the said parish of *K.* by their certain indenture there made between the said *J. W. J.* and *T.* by the names of *J. W.* knt. chief baron of the court of exchequer of the lord the king, *J. F.* knt. one of the gentlemen of the bed-chamber of the lord the king, and *T. T.* knt. one of the barons of the said court of exchequer, of the one part, and *C. H.* esq; *W. L.* gent. *T. F.* gent. and *H. G.* gent. by the names of, &c. (as in the deed) of the other part, (a counterpart whereof, sealed with the seals of the said *C. W. L. T. F.* and *H.* they the said *J. B.* and *W. B.* the now plaintiffs, bring here into court, the date whereof is the same day and year) granted and assigned to the said *W. L. F.* and *H.* the said park, with the appurtenances, (among other things) by the names of all that lordship or manor of *C.* with all and singular the rights, members and appurtenances thereof in the county of *Gloucester*, then lately parcel of the lands and possessions of *Henry* then late prince of *Wales*, and before that time parcel of the possessions of the then late monastery of *S.* and of all that park and inclosed land called *H. Park*, with the appurtenances, in the said county of *York*, and of the herbage and pannage of the same park, and of the keepership as well of the deer as of the lodges and house there; and all those closes or pastures called *V.* sometime inclosed within the park aforesaid, parcel or reputed parcel of the dutchy of *Lancaster*, and parcel or reputed parcel of the honour of *K.* in the said county of *York*, and of all and singular the messuages, houses, edifices, buildings, barns, stables, dovehouses, yards, orchards, gardens, chaies, warrens, vivaries, fishings, streams, pools, lands, tenements, meadows, feedings, pastures, woods, underwoods, commons, wastes, furze, moors, marshes, void grounds, waifs, &c. to have, hold and enjoy the premises aforesaid, with the appurtenances, to the said *W. L. T. F.* and *H. G.* their executors, administrators and assigns, for and during the whole remainder and residue of the said term of 99 years, then to come and unexpired; yielding and paying therefore yearly during the whole term aforesaid then to come and unexpired, to the said *J. W. J. F.* and *T. T.* their executors, administrators and assigns, the several annual rents or sums of money in the same indenture afterwards mentioned, to wit, for the said lordship of *C.* with the appurtenances, the annual rent or sum of 97*l.* 12*s.* 10*d.* $\frac{1}{4}$ and for the said park of *H.* with the appurtenances, the yearly rent or sum of 100*l.* of lawful money of *England*, at the feast of Saint *Michael* the archangel and the annun-

That *J. W.* &c. were possessed of a park for 99 years;

and assigned it to *W. L.* and others.

To hold for the residue of the said term.

Rendering for the said park 100*l.* per ann. &c.

4 *March*, 3
Car. 1. Grant
 to the said tes-
 tator *Richard*
Brownlowe the
 said rent of
 100*l.* for the
 residue of the
 said term.

Attornment to
 the said grant,
 1 *Jan.* 1637.
R. B. made his
 will, and the
 said *J. B.* his
 executor.

annunciation of the blessed virgin *Mary*, by even and equal portions, to be paid to the hands of the bailiff, or particular receiver of the premises for the time being, as by the same indenture more fully appears: by virtue of which said grant and assignment the aforesaid *W. L. T. H.* and *H. G.* into the park aforesaid, with the appurtenances, (among other things) entered, and were possessed thereof; and being so possessed thereof, and the said *J. W. J. F.* and *T. T.* being possessed of the aforesaid annual rent, so as aforesaid, reserved during the said term, the aforesaid *J. W. J. F.* and *T. T.* afterwards to wit, the fourth day of *March* in the 3d year of the reign of the said lord *Charles* the first, late king of *England* aforesaid, at the parish of *K.* by a certain indenture there made between the said *J. W. J. F.* and *T. T.* by the names of, &c, (as in the deed) of the one part, and the said *Richard Brownlowe*, by the name of *Richard Brownlowe* of the *Inner Temple, London*, esq; of the other part, (one part of which said indenture, sealed with the seals of the said *J. W. J. F.* and *T. T.* they the said *J. B.* and *W. B.* the now plaintiffs, bring here into court, the date whereof is the same day and year) granted to the said *R. B.* (among other things) all the said annual rent of 100*l.* so as aforesaid, to be paid for the aforesaid park of *H.* to have and to hold the said annual rent to the said *R. B.* his executors and assigns, to his and their own proper use and uses, from the time of the sealing and delivery of the same indenture last mentioned, for and during the residue of the said term of 99 years then to come and unexpired, as by the said indenture (among other things) more fully appears; to which said grant of the rent aforesaid, they the said *W. L. T. F.* and *H. G.* being possessed of the said park, with the appurtenances, as aforesaid, afterwards, to wit, on the 20th day of *March* in the 3d year of the reign of the late king *Charles* the first aforesaid, at the said parish of *K.* themselves attorned and agreed: by virtue of which grant, and by reason of the attornment and agreement aforesaid, the said *R. B.* was possessed of the said annual rent of 100*l.* for the residue of the term aforesaid; and being so possessed thereof, the said *Richard* afterwards, to wit, on the first day of *January* in the year of our Lord 1637, at the parish of *K.* made his last will and testament in writing, and by the same will appointed the said *J. Brownlowe*, now deceased, and then being in full life, executor of his will aforesaid, and afterwards there died possessed of the said annual rent as aforesaid, after whose death the said *J. B.* now deceased, in his life-time took upon himself the burthen of the execution of the said will of the said *R.* and proved that will in due form of law, to wit,

at the said parish of *K.* and was possessed of the annual rent aforesaid, by reason of the execution of that will. And the aforesaid *J. B.* and *W. B.* the now plaintiffs, further say, that the estate of them the said *W. L. T. F.* and *H. G.* of and in the park aforesaid, with the appurtenances, by virtue of the demise aforesaid by the said *J. W. J. F.* and *T. T.* to the said *L. T. F.* and *H. G.* made afterwards, to wit, on the 20th day of *May*, in the 20th year of the reign of the lord *Charles* the second, late king of *England, &c.* at the aforesaid parish of *K.* came to the said *J. H.* by assignment; by virtue whereof the said *J. H.* was and yet is possessed of the park aforesaid, with the appurtenances for the residue of the term aforesaid; and the aforesaid *J. H.* being so possessed thereof, and the aforesaid *J. B.* now deceased, being in his life-time possessed of the said annual rent as aforesaid, the said *J. B.* (now deceased) afterwards in his life-time, to wit, on the 3d day of *September* in the 31st year of the reign of the lord *Charles* the second, late king of *England, &c.* at the said parish of *K.* made his last will and testament in writing, and by the said will appointed the said *J. B.* and *W. B.* the now plaintiffs, executors of his said will, and afterwards there died possessed of the said annual rent as aforesaid; after whose death the said *J. B.* and *W. B.* the now plaintiffs, took upon themselves the burthen of the execution of the said will, and proved that will in due form of law, to wit, at the parish of *K.* and were and yet are possessed of the annual rent aforesaid, by reason of the execution of that will; and being so possessed thereof, and the said *J. Hewley* being possessed of the park aforesaid, with the appurtenances, five hundred and fifty pounds of the annual rent aforesaid, for five years and one half of an year, ending at the feast of the annunciation of the blessed virgin *Mary*, in the 7th year of the reign of the lord the now king, at the same feast, to them the said *J. B.* and *W. B.* the now plaintiffs, were in arrear, and yet are unpaid; by which an action hath accrued to them the said *J. B.* and *W. B.* the now plaintiffs, to require and have of the said *J. H.* the said 550*l.* nevertheless the said *J. Hewley*, although often requested, the said 550*l.* to them the said *J. B.* and *W. B.* the now plaintiffs, hath not yet rendered, but to render the same to them hath hitherto refused, and yet doth refuse; whereupon they say that they are injured, and have damage to the value of 100*l.* and thereupon they bring suit, &c. And they bring here into court, as well the letters testamentary of the said *R. B.* by which it sufficiently appears to the court here, that the said *J. B.* now deceased, in his life-time, was executor of the will of the said *R. B.* as the letters testa-

That, on the 20th day of *May* in the 20 year of *Car. 2.* the estate came to defendants by assignment.

3 Sept. 31 *Car. 2.* the said *J. B.* made his will, and the plaintiffs his executors.

550*l.* of the said rent for 5 years and an half in arrear the 25th *March*, 7 *W. 3.*

By which an action, &c.

mentary of the said *J. B.* deceased, by which it sufficiently appears to the court here, that they the said *J. B.* and *W. B.* the now plaintiffs, are executors of the will of the said *J. B.* deceased, and thereof to have administration, &c.

Bar that defendant was ready upon the land to pay.

And the aforesaid *John Hewley* by *S. W.* his attorney comes and defends the force and injury when, &c. and as to 50*l.* parcel of the said 550*l.* of the rent aforesaid for half an year, ending at the feast of the annunciation of the blessed virgin *Mary*, in the second year of the reign of the lord the now king and of the lady *Mary*, late queen of *England*, &c. he the said *J. H.* saith, that the aforesaid *J. B.* and *W. B.* ought not to have their said action thereof against him, because he saith, that he the said *J. H.* in, and upon that feast, for the space of one hour before the setting of the sun of the same day, and after the setting of the sun of that day, was in, and upon the park aforesaid ready to pay to them the said *J. B.* and *W. B.* the said 50*l.* payable at that feast as aforesaid; and that neither the said *J. B.* nor *W. B.* nor either of them, nor any person on their or either of their behalf, were or was then and there ready to receive that rent, and that the said rent at any time afterwards hitherto in and upon the park aforesaid, with the appurtenances, or any part thereof, by them the said *J. B.* and *W. B.* or either of them, hath not been demanded; and this he is ready to verify: wherefore he prays judgment if the said *J. B.* and *W. B.* ought to have or maintain their said action thereof against him; and as to 50*l.* parcel of the said 550*l.* of the said rent for another half of an year ended at the feast of Saint *Michael* the archangel, in the second year of the reign of the lord the now king, and the lady *Mary* the late queen of *England*, &c. he the said *J. H.* saith, that the said *J. B.* and *W. B.* ought not to have their said action thereof against him, because he saith that he the said *J. B.* in and upon that feast, for the space of one hour, before the setting of the sun of the same day, and after the setting of the sun of the same day, was in and upon the park aforesaid ready to pay to them the said *J. B.* and *W. B.* the same 50*l.* payable at that feast as aforesaid; and that neither the said *J. B.* and *W. B.* nor either of them, nor any other person on their or either of their behalf, were, or was then and there ready to receive that rent; and that the said rent, at any time afterwards hitherto in, and upon the park aforesaid, with the appurtenances, or any part thereof, by them the said *J. B.* and *W. B.* or either of them, hath not been demanded; and this he is ready to verify: wherefore he prays judgment if the said *J. B.* and *W. B.* ought to have or maintain their said action thereof against him, &c. (there
are

And that the rent hath not been since demanded.

are the like pleas to every other half year's rent demanded in the declaration.)

And the said *J. B.* and *W. B.* say, that the said several pleas of the said *J. H.* in manner and form aforesaid pleaded, and the matter in the same contained, are not sufficient in law to bar the said *J. B.* and *W. B.* from having their said action thereof against him, and that they, to those pleas in manner and form aforesaid pleaded, have no necessity, nor are they bound by the law of the land to answer; and this they are ready to verify: wherefore for want of sufficient pleas in this behalf, they the said *J. B.* and *W. B.* pray judgment and their said debt, together with their damages, by occasion of the detention of that debt, to be adjudged to them, &c. And for causes of demurrer in law in this behalf, they the said *J. B.* and *W. B.* demonstrate and shew to the court here the causes following, to wit, because that the said *J. H.* in his several pleas aforesaid hath not pleaded or alledged that he was ready to pay to them the said *J. B.* and *W. B.* the said money in the said respective pleas mentioned, nor hath brought here into court that money to be paid to them the said *J. B.* and *W. B.* and for that, because those pleas are double, uncertain, and want form, &c.

Demurrer.

Causes of demurrer.

And the said *J. H.* for that he hath sufficient matter in law in the said several pleas to bar the said *J. B.* and *W. B.* from having their said action against him the said *J. H.* above in pleading hath alledged, which he is ready to verify; which said matter they the said *J. B.* and *W. B.* have not denied, nor in any manner answered to the same, and have wholly refused to admit that averment, as before prays judgment, and that the said *J. B.* and *W. B.* may be barred from having their said action thereof against him the said *J. H.* &c.

Joinder in demurrer.

Hussey against Jacob. 2 Ld. Raym. 87.

London, *WILLIAM Hussey* complains of *Alexander Jacob*, in custody of the marshal of the *Marshalsea*, of the lord the king, being before the king himself, for that, to wit, that whereas the city of *London* in this kingdom of *England* is, and from time whereof the memory of man is not to the contrary, hath been an ancient city; and also whereas the town of *Hereford* in this kingdom of *England* is, and for all the time aforesaid hath been an ancient town; and also whereas there is had and existeth, and for all the time aforesaid there was had and hath been a certain ancient and laudable custom used and approved amongst merchants, and

Declaration on a bill of exchange against the acceptor on the custom of merchants.

and other persons using commerce, residing in *Hereford* aforesaid, and merchants and other persons using commerce, dwelling in *London* aforesaid; that is to say, that if any merchant or other person residing in *Hereford* aforesaid, should make any bill of exchange according to the custom of merchants, and direct the same bill of exchange to another person using commerce, dwelling in *London* aforesaid, and by the same bill request the same merchant or other person using commerce residing in *London* aforesaid, in such bill of exchange named, to whom the same bill of exchange should be so directed, to pay any sum of money in such bill of exchange mentioned; to any other merchant or other person in the same bill of exchange at any time in such bill of exchange specified, and that if such merchant or other person dwelling at *London* aforesaid, to whom any such bill of exchange hath been so directed hath accepted such bill of exchange to him so directed as aforesaid, according to the custom of merchants, as well such merchant, or other person to whom such bill of exchange hath been so directed, hath been chargeable by such acceptance, and for all the time aforesaid hath been accustomed to be chargeable to pay such sum of money in such bill of exchange mentioned, to such merchant or other person in such bill of exchange named, at the day or time in such bill of exchange appointed for the payment thereof, according to the tenor and effect of such bill of exchange. And whereas the right honourable the lord *Chandois* on the 21st day of *October* in the year of our Lord 1693, being at *Hereford* aforesaid, and using commerce, that is to say, at *London* aforesaid in the parish of the *Blessed Mary of the Arches* in the ward of *Cheape*, made his first bill of exchange bearing date the same day and year, and directed the same bill of exchange to the aforesaid *Alexander Jacob*, then residing and dwelling and using commerce at *London* aforesaid in the parish and ward aforesaid; and by the same bill of exchange the aforesaid lord *Chandois* requested the aforesaid *Alexander Jacob* to pay within a month after sight of his first bill of exchange the sum of 120 pieces of gold, called guineas, to the aforesaid *William Hussy*, by the name of captain *Hussy*, the aforesaid lord *Chandois* and *William Hussy* then and there using commerce; and the said *William* afterwards on the 28th day of the same month of *October* in the year aforesaid, at *London* aforesaid in the parish and ward aforesaid, did shew the said bill of exchange to him the said *Alexander*, and then and there requested the said *Alexander* to accept the said bill of exchange, and to pay to him the said *William* the said 120 pieces of gold, called guineas, according to the tenor of the bill aforesaid, and thereupon the said *Alexander* then and there upon sight thereof accepted the

the said bill of exchange, according to the custom of merchants aforesaid, by reason of which said acceptance of the said bill of exchange, and by reason of the premises, he the said *Alexander*, according to the custom aforesaid so used and approved as aforesaid, became chargeable to pay to the aforesaid *William* the said 120 pieces of gold in the said bill of exchange mentioned, according to the form and effect of the said bill; and the aforesaid *Alexander* afterwards, to wit, the day and year last mentioned, at *London* aforesaid at the parish and ward aforesaid, in consideration of the premises aforesaid assumed upon himself, and to the said *William* then and there faithfully promised that he the said *Alexander* the said 120 pieces of gold called guineas, in the said bill of exchange mentioned, would well and faithfully pay and satisfy to the said *William*, according to the form and effect of the said bill of exchange. And also whereas the aforesaid *Alexander* afterwards on the first day of *December* in the year of our Lord 1693, at *London* aforesaid at the parish and ward aforesaid, was indebted to the said *William* in other 120 pieces of gold, called guineas, of the value of 132 pounds of lawful money of *England*, for so much money by him the said *William* for the said *Alexander*, at the special instance and request of him the said *Alexander*, before that time paid, laid out and disbursed; and being thereof so indebted, the aforesaid *Alexander*, in consideration thereof, assumed upon himself, and to the said *William* then and there faithfully promised that he the said *Alexander* would well and faithfully pay and satisfy to him the said *William* the said 120 pieces of gold, called guineas; of the value of the 132 pounds last mentioned, when he should be thereunto requested. And also whereas the said *Alexander* afterwards, to wit, on the said first day of *December* in the year last aforesaid, at *London* aforesaid in the parish and ward aforesaid, was indebted to the said *William* in other 132 pounds of lawful money of *England*, for so much money by the said *William* to the said *Alexander*, at the special instance and request of him the said *Alexander*, before that time lent and advanced; and being so indebted, the said *Alexander*, in consideration thereof, assumed upon himself, and to the said *William* then and there faithfully promised that he the said *Alexander* would well and faithfully pay and satisfy to the said *William* the said 132 pounds last mentioned, when he should thereunto be required. And also whereas the said *Alexander* afterwards, to wit, on the said first day of *December* in the year last aforesaid, at *London* aforesaid in the parish and ward aforesaid, was indebted to the said *William* in other 120 pieces of gold, called guineas, of the value of 132 pounds of like lawful money

Indebitatus assumpsit for money laid out.

The like for money lent.

The like for money had and received to the plaintiff's use.

Breach of the
first promise.

And of the
other three
promises.

Imparlanee.

General issue to
the 2d, 3d, and
4th counts.

Plea as to the
first count.

Protestando that
lord *Chandois*
was not a mer-
chant;
and that the
plaintiff was not
a merchant.

money of *England* for the like sum of money by the said *Alexander* for the said *William*, and to the use of him the said *William* before that time had and received; and being thereof so indebted, the said *Alexander*, in consideration thereof, assumed upon himself, and to the said *William* then and there faithfully promised that he the said *Alexander* would well and faithfully pay and satisfy to the said *William* the said 120 pieces of gold, called guineas, last mentioned, when he should be thereto requested: nevertheless the said *Alexander* not at all regarding his said several promises and undertakings in form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *William* in this behalf, hath not paid to the said *William* the said 120 pieces of gold, called guineas, in the said first promise above mentioned, at a month after sight of the said bill of exchange above mentioned, or the said several sums of money in the said second, third and fourth promises, although to pay the said several sums of money in the said second, third and fourth promises above mentioned, to him the said *William*, the said *Alexander* afterwards, to wit, on the tenth day of *April* in the year of our Lord 1694, and often afterwards, at *London* aforesaid in the parish and ward aforesaid, was requested by the said *William*, but hath hitherto wholly refused, and yet doth refuse, to pay the same to him, whereupon the said *William* saith that he is injured, and hath damage to the value of 400*l.* and thereupon he brings suit, &c. And now here at this day, to wit, *Friday* next after the morrow of the Holy Trinity in this same term, until which day the said *Alexander* had leave to imparl to the said bill, and then to answer before the lord the king at *Westminster*, come as well the said *William* by his said attorney, as the said *Alexander* by *Vincent Skynes* his attorney; and the said *Alexander* defends the force and injury when, &c. and as to the second, third and fourth promises and undertakings in the said declaration above-mentioned, the said *Alexander* saith, that he did not assume upon himself in manner and form as the said *William* above complains against him; and of this he puts himself upon the country, and the said *William* thereof likewise: and as to the said first promise and undertaking, in the said declaration above mentioned, the said *Alexander* saith, that he by virtue of the said bill of exchange in the first promise and undertaking abovementioned by him as aforesaid made, ought not to be charged, because protesting that the said lord *Chandois* at the said time of making the said bill of exchange, or at any time afterwards, was not a person using commerce; protesting also, that the said *William* at the said time of making the said bill of exchange was not a person using commerce,

commerce, as the said *William* by his said declaration above supposes; nevertheless the said *Alexander* for plea saith, that after the 29th day of *September* in the year of our Lord 1664, and before the making the said bill of exchange, to wit, on the 21st day of *October*, in the year of our Lord 1693 above said, at *London* afore said in the parish and ward afore said, the said lord *Chandois* and *William* played between themselves with dice at a certain game called hazard, and that the said lord *Chandois* then and there at that game at one time and at one meeting lost to the said *William* the above mentioned sum of 120 pieces of gold, called guineas, and that for securing the payment of the said 120 pieces of gold lost by him the said lord *Chandois* to the said *William* as afore said, he the said lord *Chandois* afterwards, to wit, on the said 21st day of *October* in the year of our Lord 1693 above said, at the parish and ward afore said, directed his first bill of exchange to the said *Alexander*, and by the same bill of exchange the said lord *Chandois* requested him the said *Alexander* to pay at a month after sight of the said bill of exchange the said sum of 120 pieces of gold, called guineas, to the said *William*; and afterwards, to wit, on the said 28th day of *October* in the year last above said, upon sight of the said first bill of exchange, he the said *Alexander*, at *London* afore said in the parish and ward afore said, accepted the said bill of exchange for the payment of the said 120 pieces of gold, and assumed upon himself, as the said *William* by the declaration afore said above hath supposed; by reason of which premisses, and by force of the statute in that case made and provided, the said first bill of exchange by him the said *Alexander* as afore said accepted, and the acceptance thereof, and the promise and undertaking of him the said *Alexander*, by him the said *Alexander* as afore said made, became and were, and now are, void and of no force in law: and this he is ready to verify: wherefore he prays judgment, if he by virtue of the bill of exchange afore said by the afore said lord *Chandois*, against the form of the statute afore said as afore said given and made, and by him the said *Alexander* in form afore said accepted, ought to be charged, &c. And the said *William* saith, that he by any thing by the said *Alexander* above in pleading alledged, as to the first promise and undertaking afore said, ought not to be barred from having his said action thereof against him the said *Alexander*, because he saith, that the plea afore said by the said *Alexander* in manner and form afore said above pleaded, and the matter in the same contained, are not sufficient in law to preclude him the said *William* from having his said action thereof against the said *Alexander*; to which said plea

The stat. 14
Car. 2. against
gaming pleaded,
that the bill was
given for money
lost at hazard by
lord *Chandois* to
the plaintiff.

Demurrer.

Joinder in
demurrer.

Venue awarded,
as well to try
the issue as to
inquire of da-
mages if judg-
ment be for
plaintiff on the
demurrer.

be the said *William* hath no necessity, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient answer in this behalf, he the said *William* prays judgment and his damages, by occasion of the non-performance of the said first promise and undertaking, to be adjudged to him, &c. And for cause of demurrer of law in this behalf according to the form of the statute in that case made and provided, he the said *William* sheweth, and to the Court here demonstrates these causes following, that is to say, that the plea aforesaid amounts only to the general issue, and also is double, perplexed, uncertain, and wants form, and also is no answer to the declaration aforesaid. And the said *Alexander* saith, that the plea aforesaid by him the said *Alexander*, as to the first promise and undertaking in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to bar him the said *William* from having his said action thereof against him the said *Alexander*; which said plea, and the matter in the same contained, he the said *Alexander* is ready to verify and prove, as the court, &c. And because the said *William* hath not answered to that plea, nor hitherto in any manner denied it, he the said *Alexander*, as before, prays judgment, and that the said *William* may be barred from having his said action thereof against him the said *Alexander*, as to the said first promise and undertaking, &c. But because the court of the said lord the king now here is not yet advised of their judgment to be given of and upon the premises, day thereupon is given to the parties aforesaid before the lord the king at *Westminster*, until ——— next after ——— to hear their judgment of and concerning the premises, for that the court of the said lord the king is not yet, &c. And as well to try the issue aforesaid between the parties aforesaid above joined by the country to be tried, as to inquire what damages the said *William Hussey* hath sustained by occasion of the premises aforesaid, whereupon the parties aforesaid have put themselves upon the judgment of the court, if judgment thereupon shall happen to be given for the said *William* against the said *Alexander Jacob*, let a jury thereupon come before the lord the king at *Westminster* at the said day, and who neither, &c. to take cognizance, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Plea

Pleas before the Lord the King at Westminster of the Term of Saint Hilary in the sixth Year of the Reign of the Lord William the Third, King of England, &c. Roll 729.

Leigh against Brace. 2 Ld. Raym. 101.

Worcestershire, **B**E it remembered, that on *Wednesday* next (to wit) after eight days of Saint *Hilary* in this same term before the lord the king at *Westminster* came *George Leigh* by *Thomas Callow* his attorney, and brought here into the court of the said lord the king then there his certain bill against *Samuel Brace*, in custody of the marshal, &c. of a plea of trespass and ejectment; and there are pledges of prosecuting to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, (to wit) *Worcestershire,* (to wit) *George Leigh* complains of *Samuel Brace*, in custody of the marshal of the *Marshalsea* of the lord the king, being before the king himself, for that, to wit, that whereas one *John Cooks* on the first day of *October* in the 6th year of the reign of the lord *William* the now king and lady *Mary*, late queen of *England*, &c. at the parish of *Bromsgrove* in the county aforesaid, demised, granted and to farm lett to the aforesaid *George* one messuage, 30 acres of land, 10 acres of meadow and 20 acres of pasture, with the appurtenances, situate, lying and being in the parish of *Bromsgrove* aforesaid in the county aforesaid; to have and to hold the tenements aforesaid, with the appurtenances, to him the said *George* and his assigns, from the feast day of Saint *Michael* the archangel then last past unto the full end and term of seven years from thence next following and fully to be compleat and ended; by virtue of which said demise the said *George* entered into the tenements aforesaid, with the appurtenances, and was possessed thereof until the aforesaid *Samuel* afterwards, to wit, on the same first day of *October* in the 6th year above said, with force and arms into the tenements aforesaid, with the appurtenances, in and upon the possession of him the said *George* entered thereupon; and him the said *George* from his farm aforesaid, his said term thereof not being ended, ejected, expelled and removed, and him the said *George* from his possession aforesaid thereof kept out, and yet keeps out,

H 2

and

and other wrongs to the said *George* then and there did, against the peace of the said lord the now king and the late lady the queen, and to the damage of him the said *George* of ten pounds; and thereupon he brings suit, &c.

Not guilty.

And the said *Samuel* by *John Hancocks* his attorney comes and defends the force and injury when, &c. and saith that he is not guilty thereof; and of this he puts himself upon the country; and the said *George* likewise: therefore let a jury come before the lord the king at *Westminster* on *Tuesday* next after eight days of the purification of the blessed virgin *Mary*; and who neither, &c. to take cognizance, &c. because as well, &c. The same day is given to the party aforesaid there, &c. Afterwards the process thereupon is continued between the parties of the plea aforesaid by the jury being thereupon respited between them before the lord the king at *Westminster* until *Wednesday* next after fifteen days of *Easter*

Nisi prius.

from thence next following, unless the justices of the lord the king, assigned to take the assizes in the county aforesaid, shall first come on *Saturday* the 2d day of *March* at *Worcester* in the county aforesaid, by form of the statute, &c. for want of jurors, &c. At which day before the lord the king at *Westminster* cometh the said *George* by his said attorney, and the said justices before whom, &c. have sent here their record had before them in these words, (to wit) Afterwards on the day and at the place within contained, before *Giles Eyre*, knt. one of the justices of the lord the king, assigned to hold pleas before the king himself, and *Thomas Breton*, esq; to him the said *Giles Eyre* and *William Gregory*, knt. another justice of the said lord the king, assigned to hold pleas before the king himself, justices of the said lord the king, assigned to take the assizes in the county of *Worcester*, by form of the statute, &c. for this time associated, the presence of the said *William Gregory* not being expected, by virtue of the writ of the lord the king of *Si non omnes*, &c. come as well the within named *George Leigh*, as the within written *Samuel Brace*, by their attornies within contained; and the jurors of the jury, whereof mention is within named, being called come, who being chosen, tried and sworn to speak the truth concerning the matters within contained, say upon their oath, that

Special verdict.

one *Walter Brace* was seised of the tenements in the declaration within mentioned, in his demesne as of fee; and being so seised thereof, the said *Walter Brace*, before the said time when, &c. to wit, on the 25th day of *July* in the 20th year of the reign of the lord *James* the first,

late king of *England*, &c. by his certain charter, sealed with the seal of him the said *Walter*, and to the jury aforesaid in evidence shewn, the date whereof is the same day and year, enfeoffed *Thomas Wilkes* and *Thomas Flavell* of and in the tenements aforesaid, with the appurtenances, to have and to hold to them the said *Thomas* and *Thomas*, and their heirs, to the uses in the said charter specified, the tenor of which said charter follows in these words, To all christian people to whom this present writing shall come, *Walter Brace* of *Forkbury* in the parish of *Bromsgrove* in the county of *Wigorn*, yeoman, sendeth, greeting: know ye, that I the said *Walter Brace*, for the natural love and affection that I bear to my son *Thomas Brace*, and for divers other considerations me especially moving, have given, granted, enfeoffed and confirmed, and by these presents do give, grant, enfeoff and confirm unto *Thomas Wilkes* of *Forkbury* aforesaid, yeoman, and unto *Thomas Flavell* of *Bromsgrove* aforesaid, clerk, their heirs and assigns, all that dwelling-house or tenement, with the appurtenances, which I the said *Walter Brace* purchased of *Stephen Dipple* of *Bromsgrove* aforesaid, and is situate in the high street of *Bromsgrove*, between the land of *Edward Seabright*, esq; and the lands of *Gilbert Butler*, gent. and now in the tenure or occupation of *Walter Rose*; and also one other house or cottage, with the appurtenances, situate and being in *Forkbury* aforesaid, wherein *Gilbert Westley* now dwelleth, together with the close wherein the said cottage standeth, containing by estimation one acre and an half, or thereabouts, be the same more or less; one other close of pasture called by the name of *Whern's Close*, containing by estimation three acres, or thereabouts; one other close of pasture, called by the name of *Woodfell*, containing by estimation five acres, or thereabouts; two other closes called the *Slade Crofts*, containing by estimation six acres, or thereabouts: one day mowth of meadow ground lying in *Long Meadow* next unto the estate there, and two fleeting acres lying in *Broad Meadow*, with all ways, waters, woods, underwoods, commons, profits, commodities, advantages and hereditaments whatsoever unto the said premises, and every part and parts thereof, belonging or in any wise appertaining; all which said premises are situate, lying and being in the said parish of *Bromsgrove* and county of *Wigorn*, to have and to hold the said houses or tenements, lands, and all and singular other the premises, with the appurtenances, and every part thereof, to the said *Thomas Wilkes* and *Thomas Flavell*, their heirs and assigns,

assigns, to the uses, intents and behoofs herein after by these presents mentioned and declared, and to no other use, intent or purpose, that is to say, to the use and behoof of me the said *Walter Brace*, for and during my natural life, and after the decease of me the said *Walter Brace*, to the use and behoof of the aforesaid *Thomas Brace* my son, and his heirs for ever; and for default of issue of the body of the said *Brace*, then to the use and behoof of the right heirs of me the said *Walter Brace* for ever, to be holden of the chief lord or lords of the fee or fees of the premises, by the rents and services thereof first due and of right accustomed; and I verily the said *Walter Brace* and my heirs the said houses or tenements, lands, and all and singular other the premises, with the appurtenances, and every part and parcel thereof, unto the said *Thomas Wilkes* and *Thomas Flavell* and their heirs, shall and will warrant and for ever defend by these presents. In witness whereof I the said *Walter Brace* unto this my present writing indented have set my hand and seal the 25th day of *July* in the reign of our sovereign lord king *James*, by the grace of God, of *England, France and Ireland* king, defender of the faith, &c. the twentieth, and of *Scotland* the fifty-fifth. *Annoque Domini 1622*. By virtue whereof, and also by force of the act of parliament for transferring of uses into possession made and provided, the said *Walter* was seised of the premises in the said charter mentioned, being the premises aforesaid in the declaration aforesaid specified, as of his freehold, for the term of his life, the remainder thereof to the said *Thomas Brace* belonging, as the law requireth. And the said jurors further upon their oath say, that the aforesaid *Walter Brace* afterwards and before the said time when, &c. died, and that the said *Thomas Brace*, the son of him the said *Walter*, entered into the tenements in the declaration within written mentioned, and was seised thereof, as the law requireth; and that he the said *Thomas Brace* being so seised thereof, in due manner and form made his last will and testament in writing on the 16th day of *April* in the 33d year of the reign of *Charles* the second, late king of *England, &c.* which said bill follows in these words: In the name of God, *Amen*, the 16th day of *April* in the 33d year of the reign of our sovereign lord *Charles* the second, by the grace of God, of *England, Scotland, France and Ireland* king, defender of the faith, &c. *Annoque Domini 1681*. I *Thomas Brace* of *Forkbury* in the parish of *Bromsgrove* in the county of *Wigorn*, yeoman, being weak of body, but of sound and perfect memory and understanding,

standing, thanks be to God, calling to mind the uncertain state of this life, and being desirous to settle things in order for the leaving the world, I having lived in the enjoyment thereof till a very considerable age, do make this my last will and testament in manner following; revoking by these presents all and every other testament or testaments, will and wills heretofore by me made, either by word or writing, and this to be taken only for my last will and testament. First, I bequeath my soul unto God my creator, and to Jesus Christ my redeemer, and my body to the earth, from whence it was taken, to be decently buried in such christian manner as to my executor herein after named shall be thought most convenient, there to rest until my soul and body shall meet again and be joined together at the resurrection: and touching such temporal estate as God has been pleased to bestow upon me, I do order, give and bequeath the same in manner following: *Imprimis*, I do hereby give and devise unto my son *Samuel Brace*, during the term of his natural life, eight pounds a year of lawful money of *England*, to be paid him quarterly from the time of my decease, by my executor herein after mentioned, by my said son *Samuel*, permitting and suffering *William Fowkes* and *Jonatban Wall*, their executors, administrators and assigns, peaceably and quietly to hold and enjoy the lands and tenements and premisses to them by me severally leased, at and under the covenants specified in their several leases; but if he molest or hinder the said *Jonatban Wall* and *William Fowkes* of their quiet enjoying the premisses, or any part thereof, to them by me devised, then my will is, that my said son *Samuel* have four pounds a year only during his life, paid him quarterly by my executor, in full discharge and satisfaction of the said eight pounds a year. *Item*, I give and bequeath unto my daughter *Elizabeth Brace* three hundred pounds of like money of *England* as followeth, (*viz.*) two hundred pounds within a year, and one hundred pounds more, the remaining part of the said three hundred pounds, within two years after my decease, if she so long live, or bear any issue of her body, with all my goods that shall be in my house at *Whern's Ash* at my decease. *Item*, I give to my grandson *Henry Cooks* during his natural life, all that my messuage or tenement in *Farkbury*, with two acres of land to the same belonging, in the possession of one *William Perkes*, and four more acres of land to the same adjoining, in the possession of one *William Oxford*; the rents and profits of the said messuage and several parcels of land to be received and enjoyed by

by my executors till my said grandchild shall attain to the age of 21 years, for the maintenance and education of my said grandchild. *Item*, I give and devise to my grandchildren *Mary* and *Hannah Cooks* all those my two closes of land in *Catfill*, adjoining to the common field there called *Intall field*, containing by estimation about four acres, and three several parcels of land in *Intall field*, containing by estimation three acres. And lastly, I give and devise unto *John Cooks* my son-in-law, whom I make executor of this my last will, and to his heirs on the body of my daughter *Rebecca* begotten, or to be begotten, all my estate, lands, tenements and houses whatsoever in *Forkbury* and *Catfill* in the said parish of *Bromsgrove* and county of *Worcester*, and not herein before devised, and the reversion of the said messuage and lands herein before bequeathed, unto my said grandchild *Henry Cooks*, from and after his decease, paying the legacies and annuities in this my will comprised, &c. And the said jurors further upon their oath say, that the said *Thomas Brace* afterwards died seised of the tenements aforesaid, with the appurtenances, as aforesaid; and that the tenements aforesaid, with the appurtenances, in the declaration aforesaid specified, and the tenements aforesaid in the will aforesaid before recited, and by the same expressed to be devised to the aforesaid *John Cooks* in possession, are the same tenements, with the appurtenances, and not others or divers; and that the said *John Cooks*, after the death of him the said *Thomas Brace*, into the tenements aforesaid, being the tenements in question, entered by colour of the will aforesaid, and was thereof seised, as the law requireth. And the said jurors upon their oath further say, that the said *John Cooks* after the death of the said *Thomas Brace* paid as well all and singular the legacies and annuities in the same will mentioned and comprised at such times, and in the manner and form, as in the same will is directed; as all the just debts and funeral expences of the said *Thomas Brace*, according to the true intention of the said will. And the jurors aforesaid upon their said oath further say, that the within named *Samuel Brace* the now defendant is the son and heir of the body of the said *Thomas Brace*; and that the said *Samuel Brace*, after the death of the said *Thomas* his father, entered into the tenements aforesaid, with the appurtenances, and was seised thereof, as the law requireth. And the aforesaid *John Cooks* afterwards and before the said time when, &c. to wit, on the within written first day of *October* in the 6th year of the reign of the lord *William* now king of *England*, and of the lady

lady *Mary*, late queen of *England*, &c. at the parish of *Bromsgrove* aforesaid within written in the county aforesaid, into the tenements aforesaid, with the appurtenances, entered, and then and there demised, granted and to farm lett to the said *George* the tenements aforesaid, with the appurtenances, to have and to hold the tenements aforesaid, with the appurtenances, to the said *George* and his assigns, from the feast day of Saint *Michael* the archangel then last past unto the full end and term of seven years from thence next following and fully to be compleat and ended: by virtue of which said demise he the said *George* entered into the tenements aforesaid, with the appurtenances, and was thereof possessed, until the said *Samuel* the defendant afterwards, to wit, on the same first day of *October* in the 6th year abovesaid into the tenements aforesaid, with the appurtenances, in and upon the possession of him the said *George* thereupon entered, and him the said *George* from his farm aforesaid, his term not being yet ended, ejected, expelled and removed, and him the said *George* from his possession aforesaid thereof kept out, and yet keeps out: but whether upon the whole matter aforesaid, by the jurors aforesaid in form aforesaid found, the said *Samuel Brace* the now defendant is guilty of the trespass and ejectment within written, in manner and form as the said *George* within complains against him, or not, the jurors aforesaid are wholly ignorant, and thereupon pray the advice and consideration of the court, &c. And if, upon the whole matter aforesaid by the jurors aforesaid in form aforesaid found, it shall seem to the court of the lord the king here that the said *Samuel Brace* the now defendant is guilty of the trespass and ejectment within written, in manner and form as the said *George* within complains against him, then the said jurors further upon their oath say, that the said *Samuel Brace* is guilty of the trespass and ejectment within written, in manner and form as the said *George Leigh* within complains against him; and they assess the damages of him the said *George Leigh*, by the occasion within written, besides his costs and charges by him about his suit in this behalf laid out, to sixpence, and for those costs and charges to 40s. But if, upon the whole matter aforesaid by the jurors aforesaid in form aforesaid found, it shall seem to the court here that the aforesaid *Samuel Brace* the now defendant is not guilty of the trespass and ejectment within written, in manner and form as the said *George* within complains against him, then they the said jurors further say upon their said oath, that the said *Samuel Brace* is not guilty

of

of the trespasss and ejectment in the declaration within written specified, as the said *Samuel Brace* within for himself in pleading hath alledged: and because the court of the lord the king now here is not yet advised of giving their judgment of and upon the premisses, day is thereupon given to the parties aforesaid before the lord the king at *Westminster* until ——— next after ——— to hear their judgment of and upon the premisses, for that the court of the said lord the king now here thereof is not yet, &c.

Trinity Term in the eighth Year of King William the Third. Roll 348.

Markes against Marryott. Ld. Raym. 114.

Tempest.

Debt on a bond. *Surry, SIMON Marryott*, the elder, late of *Chiddingfold* in the county aforesaid, gent. otherwise called *Simonem Marryott Seniore de Chiddingfold in Com' Surr' Gen'*, was summoned to answer to *William Markes* of a plea that he render to him two hundred pounds, which he oweth to him, and unjustly detains, &c. And whereupon the said *William* by *John Tanner* his attorney saith, that whereas the said *Simon* on the second day of *July* in the seventh year of the reign of the lord the now king, at *Hastmere* in the county aforesaid, by his certain writing obligatory, granted himself to be held and firmly bound to the aforesaid *William*, in the said two hundred pounds to be paid to him the said *William* when he should be thereunto requested: neverthelcs the aforesaid *Simon*, although oftcs requested, hath not rendered the said two hundred pounds to him the said *William*, but to render the same to him hath hitherto refused, and yet doth refuse, whereupon he saith that he is injured, and hath damage to the value of ten pounds; and thereupon he brings suit, &c. And he brings here into court the writing aforesaid, which testifies the debt aforesaid in form aforesaid, the date whereof is the day and year above-written.

Bar.

Oyer of condition to perform an award.

And the aforesaid *Simon* by *William Rycroft* his attorney comes and defends the force and injury when, &c. and prays *Oyer* of the writing obligatory aforesaid, and it is read to him, &c. and he also prays *Oyer* of the condition of the same writing, and it is read to him in these words: The condition of this obligation is such, that if the above-bounden *Simon Marryott*, his heirs, executors and administrators, for his and their parts and behalfs, do and shall in all

all things well and truly stand to, obey, abide, perform, fulfil and keep the award, order, arbitrament, final end and determination of *Roger Shorter* of *Pitfield* in the parish of *Frintham* in the county of *Surry*, gent. and *Edward Holt* of *Chiddingfold* in the county aforesaid, gent. arbitrators indifferently elected and named, as well on the part and behalf of the above-bound *Simon Marryott*, as of the above-named *William Markes*, to arbitrate, award, order, judge and determine of and concerning all and all manner of action and actions, cause and causes of action, suits, accounts, bills, bonds, specialties, judgments, executions, extents, quarrels, controversies, trespasses, damages and demands whatsoever at any time heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed or depending by or between the said parties, or either of them, so as the said award be made in writing or otherwise, and ready to be delivered or given up to the said parties, or either of them, as shall desire the same, on or before the 14th day of *August* next ensuing the date of these presents, that then this obligation shall be void and of none effect, or else shall be and remain in full force and virtue; which being read and heard, he the said *Simon* saith, that the said *William* ought not to have his action aforesaid against him, because he saith that the aforesaid arbitrators, after the making of the writing aforesaid, and on or before the said 14th day of *August*, in the condition aforesaid above specified, made no award, order, arbitrament, final end or determination between the parties aforesaid, of and upon the premises in the condition aforesaid mentioned, according to the form and effect of that condition; and this he is ready to verify: wherefore he prays judgment if the aforesaid *William* ought to have his action aforesaid thereof against him, &c.

No award.

And the aforesaid *William Markes* saith, that he by any thing before alledged ought not to be barred from having his said action, because he saith, that the aforesaid arbitrators in the condition aforesaid above-named, after the making of the writing obligatory aforesaid, and before the said 14th day of *August* in the said condition mentioned, that is to say, on the 13th day of *August* in the seventh year of the reign of the said lord the now king aforesaid, taking upon themselves the burthen of the arbitrament, order and determination aforesaid of and upon the premises in the said condition above specified, at *Haslemere* aforesaid in the said county of *Surry*, made their certain award of and upon the same premises, and thereby ordered and arbitrated between him the said *William Markes* and the said *Simon Marryott* of and upon the same premises in form following, that is to say,

Replication.
An award made.

That

That he the said *William Markes*, his executors, administrators or assigns, should pay or cause to be paid to the said *Simon Marryott*, his executors, administrators or assigns, at or in the then dwelling-house of *John Waterford*, bearing the sign of the *Eagle* in *Haslemere* aforesaid, the full sum of 31 *l.* 15 *s.* of lawful money of *England*, on or upon the 30th day of *September* then next following: which said sum the said arbitrators arbitrated and determined, should be in full satisfaction of all actions, suits, dues and demands from the said *William Markes* to the said *Simon Marryott*: and farther, the said arbitrators thereby ordered and arbitrated that the said *Simon Marryott*, his heirs or assigns, should deliver up, or caused to be delivered up, to the said *William Markes*, his heirs or assigns, upon the payment of the money aforesaid, upon the said 30th day of *September* then next following, quiet and peaceable possession of all those messuages or tenements, barns, lands, tenements and hereditaments, with the appurtenances, called or known by the name of *Clamerhill*, situate, lying and being in the parish of *Chiddingfold* in the county aforesaid; which said premises then were in the possession of the aforesaid *Simon Marryott*, or his assigns, and an intailed deed of settlement bearing date the 12th day of *December* in the reign of king *James* the first, made of the premises to the aforesaid *William Markes*, by the ancestors of him the said *William*, and all others the deeds and writings which he the said *Simon Marryott* had in his hands, custody or possession, which did belong to the aforesaid lands, or any other lands or tenements of the said *William Markes*, and also all bonds, assignments of bonds and judgments which he the said *Simon Marryott* had upon the said *William Markes*; and they the said arbitrators thereby further ordered and arbitrated that he the said *Simon Marryott* upon payment of the money to him as aforesaid, and upon request thereupon made, should seal and deliver as his deed to the aforesaid *William Markes*, or to his use, a general release of all actions, suits, dues and demands, from the beginning of the world until the twelfth day of the then instant *August*, and also a warrant of attorney to acknowledge satisfaction upon record in the courts of the lord the king at *Westminster*, upon all such judgments as he the said *Simon Marryott* had against the said *William Markes*. And also the said arbitrators thereby further ordered and arbitrated, that the aforesaid *William Markes*, upon the delivery of peaceable possession of all and singular the lands, tenements, deeds, writings, and of all and singular other the premises to him as aforesaid, should seal and deliver as his deed to the said *Simon*, or to his use, a like general release of all actions, suits, dues and demands from the be-

ginning

beginning of the world until the 12th day of the then instant *August* then past; of which said arbitrament the aforesaid *Simon* afterwards, to wit, on the aforesaid 14th day of *August* in the said condition mentioned, at *Haslemere* aforesaid, had notice: and the said *William Markes* saith, that he the said *William Markes*, after the making of the arbitrament aforesaid, to wit, on the said 30th day of *September* in the seventh year aforesaid, at the said dwelling-house of the said *John Waterford* in *Haslemere* aforesaid, for the space of six hours next before the sun-setting of the same day, and at the sun-setting of the same day was ready, and offered to pay to the said *Simon* the full sum aforesaid of 31*l.* 15*s.* of lawful money of *England*, which the arbitrators aforesaid arbitrated to be paid to him the said *Simon* by the said *William Markes*, upon the same day as aforesaid, according to the form and effect of the arbitrament aforesaid; and that neither the said *Simon*, nor any other person on the behalf of him the said *Simon*, then and there was ready to receive of the said *William Markes* the said 31*l.* 15*s.* and that the said *William* after the said 30th day of *September* hitherto hath been, and yet is ready to pay to the said *Simon* the said 31*l.* 15*s.* And further the said *William Markes* in fact saith, that the said *Simon* hath not delivered up, or caused to be delivered up to the aforesaid *William Markes*, upon the said 30th day of *September* in the year aforesaid, or at any time hitherto, quiet and peaceable possession of the messuage or tenement, barns, lands and hereditaments, with the appurtenances, called or known by the name of *Clamertill*, situate in the said parish of *Chiddingfold*, according to the form and effect of the said arbitrament; and this he is ready to verify: wherefore he prays judgment and his debt aforesaid, together with his damages, by occasion of the detention of that debt, to be adjudged to him, &c.

Breach assigned.

And the said *Simon* said that the plea a resaid of the said *William* above pleaded in reply, and the matter in the same contained, are not sufficient in law for him the said *William* to have his said action to be maintained against him; and that he to that plea in manner and form aforesaid pleaded hath no necessity, nor is he bound by the law of the land to answer; and this he is ready to verify: wherefore for want of a sufficient replication of him the said *William* in this behalf, he the said *Simon* prays judgment, and that the said *William* may be barred from his action aforesaid, &c.

Demurrer to the replication.

And the said *William Markes* since he hath above alleged in reply a sufficient plea and matter in law to maintain his said action against the said *Simon*, which he is ready to verify: which said plea, and the matter in the same contained, the

Joinder in demurrer.

the said *Simon* hath not denied, nor in any manner hath answered to it, but wholly refuses to admit the averment aforesaid, as before prays judgment, and his debt aforesaid, together with his damages, by occasion of the detention of that debt, to be adjudged to him, &c.

Easter Term in the eighth Tear of King William the Third. C. B. Roll 579.

Searle against Darford. 1 Ld. Raym. 120.

Affault and battery.

Huntingdonshire, JOHN Darford late of *Comington* in the (to wit, county aforesaid, butcher, was attached to answer to *George Searle* of a plea, wherefore with force and arms upon him the said *George* at *Hamerton* he made an assault, and beat, wounded and ill treated him, so that his life was despaired of, and other wrongs to him did, to the great damage of him the said *George*, and against the peace of the lord the now king, &c. And whereupon the said *George* by *Jonathan Nicols* his attorney complains, that the aforesaid *John* on the 20th day of *October* in the 7th year of the reign of the lord the now king, with force and arms, &c. to wit, with swords, staves and knives upon him the said *George* at *Hamerton* aforesaid made an assault, and beat, wounded and ill treated him, so that his life was despaired of, and other wrongs, &c. and against the peace, &c. and whereupon he saith that he is injured, and hath damage to the value of 40*l.* and thereupon he brings suit, &c.

Not guilty as to the force, &c. and wounding.

Justification as to the residue in defence of his possession in a close in *Comington*.

And the said *John Darford* by *John Crane* his attorney comes and defends the force and injury when, &c. and as to the coming with force and arms, and also the wounding aforesaid, saith, that he is in no wise guilty thereof, as the said *George* above complains thereof against him; and of this he puts himself upon the country; and the said *George* likewise. And as to the residue of the trespass and assault above supposed to be done, he the said *John* saith that the said *George* ought not to have his said action thereof against him, because he saith that before the said time when the said trespass and assault are supposed to be done, and at the same time when, &c. he the said *John Darford* was and yet is lawfully possessed of one close called *Little Ale*, with the appurtenances, in *Comington* in the county of *Huntingdon* aforesaid; and that before the said time when, &c. to wit, in the day and year aforesaid in the declaration aforesaid above specified, the aforesaid *George* of his own wrong, and against the

the will of him the said *John Darford*, into that close, in and upon the possession of him the said *John* thereof entered, and with a certain waggon and certain horses drawing that waggon through and over the said close would and endeavoured to pass, subverting the soil of the said close, with the wheels of the said waggon; and doing damage thereby to him the said *John*; upon which he the said *John Darford* at the said time when, &c. came to the said *George*, then being in the said close as aforesaid, and then and there requested him the said *George* that he would depart out of the said close, and not do any further damage in that close; and the said *George* would not depart out of the said close, and refused to depart, and would not further recede therefrom, wherefore he the said *John* then and there gently laid his hands upon him the said *George*, to cause him the said *George* to depart from the close aforesaid, which is the same residue of the trespass and assault aforesaid whereof the said *George* himself now above complains; without this, that the said *John Darford* is guilty of the said trespass and assault at *Hamerton* aforesaid, or any where else out of the said close in *Comington* aforesaid; and this he is ready to verify: wherefore he prays judgment if the aforesaid *George* ought to have his said action thereof against him, &c.

Traverse that,
he is guilty at
Hamerton.

And the said *George*, as to the said residue of the trespass and assault aforesaid above as aforesaid done, saith, that he, by any thing in the said plea before alledged, ought not to be barred from having his said action thereof, because he saith, that the said entry of him the said *John* into the close aforesaid, with the waggon and horses aforesaid drawing that waggon, at the said time when, &c. was in, by and through a certain way in the same close * used and enjoyed by permission; and that he the said *George* was then and there in the same way, and not out of that way, with the waggon and horses aforesaid drawing that waggon, peaceably passing through, until the said *John Darford*, moved by a sudden passion, then and there, to wit, the day and year aforesaid in the declaration aforesaid above specified, of his own wrong upon him the said *George* in the said close at *Comington* aforesaid made an assault, and him the said *George* with a certain great stick then and there violently and vehemently struck upon his head, and with divers strokes beat and ill treated him, so that his life was despaired of, which is the same residue of the trespass and assault whereof he

Replication.

* *Note*; The entry is in these words, *Ex permissione usitat' & gravat'*; but *Quere*, whether it was not a way by prescription, as the report says it was.

Traverse after
a traverse.

above complains; without this, that the said *John Darford* then and there gently laid his hands upon him the said *George*, as the said *John* in pleading thereof hath alledged; and this he is ready to verify: wherefore since the said *John* hath acknowledged the residue of the trespass and assault aforesaid, he the said *George* prays judgment and his damages, by occasion of the residue of the same trespass and assault aforesaid, to be adjudged to him, &c.

Demurrer.

And the said *John* saith, that the said plea of the said *George* above pleaded in reply, and the matter in the same contained, are not sufficient in law for him the said *George* to have his said action to be maintained against him the said *John*; and that he, to that plea in manner and form aforesaid pleaded, hath no necessity, nor is he bound by the law of the land to answer; and this he is ready to verify: wherefore for want of a sufficient plea of him the said *George* in this behalf, he the said *John* as before prays judgment, and that the aforesaid *George* may be barred from having his said action against him the said *John*, &c. And for cause of this demurrer in law, he the said *John* sheweth to the court here, and saith, that the said plea or replication of the said *George* is double or triple, to wit, in justifying (although insufficient) the entry of him the said *George* into the close of him the said *John* aforesaid, and also in assigning another assault and beating than he the said *John* hath above alledged, and also in traversing the assault and beating by him the said *John* above acknowledged; and also for that the traverse aforesaid is wholly superfluous and redundant, and the said replication is uncertain, and wants form.

Cause of de-
murrer.

Joinder in
demurrer.

And the said *George* since he sufficient matter in law to have his said action to be maintained against the said *John* hath above in reply alledged, which he is ready to verify, which said matter the said *John* hath not denied, nor in any manner answered it, as before prays judgment and his damages, by occasion of the said residue of the trespass and assault aforesaid, to be adjudged to him, &c. And because the justices here will advise themselves of and upon the premises before they give judgment thereupon, day is given to the parties aforesaid here until in eight days of the Holy Trinity, to hear their judgment thereupon, for that the said justices are not thereupon yet, &c.

Curia advisare
vult.

Trinity Term in the eighth Year of King William
the Third. Roll 1606.

Nevill against Peckham. 1 Ld. Raym. 121.

Cooke.

Suffex, **WILLIAM** Peckham late of *Rumboldswick* in
(to wit) the county aforesaid, gent. and *John Peckham*
late of *Rumboldswick* aforesaid in the county aforesaid, gent.
were attached to answer to *Stephen Nevill* of a plea, where-
fore with force and arms the close of him the said *Stephen*
Nevill, at the parish of *Rumboldswick*, they broke and
entered, and his grafs to the value of 20*s*. there lately grow-
ing with their feet in walking they trod down and consumed,
and other his grafs to the value of 40*s*. there lately growing
with certain cattle they depastured, trod down and consum-
ed; and also the sheep of him the said *Stephen* of the
price of 20*l*. there lately found, without a reasonable cause,
they chased, took and impounded, and the same there so
impounded, against the law and custom of *England*, they for
a long time detained, whereby those sheep were very much
worse: and also him the said *Stephen* from the quiet posses-
sion and occupation of his close aforesaid (they falsely claim-
ing right and title in the same close) disturbed and hindered,
and other wrongs to him did, to the great damage of him
the said *Stephen*, and against the peace of the lord the now
king, &c. And whereupon the said *Stephen* by *John Wake-*
ford his attorney complains that the said *William* and *John*
Peckham on the 14th day of *December* in the 7th year of the
reign of the lord *William* the third, now king of *England*,
&c. with force and arms, &c. the close of him the said
Stephen, called *Hurnethill*, at the parish of *Rumboldswick*,
they broke and entered, and his grafs to the value, &c.
there lately growing with their feet in walking trod down
and consumed, and other his grafs to the value, &c. there
lately growing with certain cattle, to wit, with horses,
oxen, cows, swine and sheep they depastured, trod down
and consumed; and also the sheep, to wit, 27 sheep of him
the said *Stephen*, of the price, &c. there lately found, with-
out reasonable cause, they chased, took and impounded, and
the same there so impounded, against the law and custom of
England, they for a long time, to wit, for the space of 20
hours then next following detained, whereby the said sheep
were very much worse; and also him the said *Stephen* from

Trespass for
breaking plain-
tiff's close cal-
led *Hurnethill* in
the parish of
Rumboldswick,

treading down
the grafs,
depasturing the
grafs,
and for chasing,
taking and im-
pounding plain-
tiff's sheep.

the quiet possession and occupation of his close aforesaid (they falsely claiming right and title in the same close) disturbed and hindered, and other wrongs, &c. to the great damage, &c. and against the peace, &c. whereupon he saith that he is injured and hath damage to the value of 20*l.* and thereupon he brings suit, &c.

Plea.
One pleads by attorney, the other by his guardian.

Not guilty to all the trespasss, except the chasing and impounding.

And as to that, defendants justify for damage-feasant in the New Orchard.

And traverse the place in the declaration.

And the said *William* by *Thomas Peckham* his attorney, and the said *John Peckham* by *Thomas Peckham*, who is admitted by the court here to defend for the same *John* who is within age, as the guardian of him the said *John*, come and defend the force and injury when, &c. and as to the coming with force and arms, and also the whole trespasss aforesaid, except the chasing, taking and impounding of the sheep aforesaid, say that they are in no wise guilty thereof; and of this they put themselves upon the country; and the said *Stephen* likewise: and as to the chasing, taking and impounding of the sheep aforesaid above supposed to be done, they the said *William* and *John Peckham* say, that the said *Stephen* ought not to have his said action thereof against them, because they say that before the said time when the said trespasss is supposed to be done, and also at the same time when, &c. the said *William* was seised in his demesne as of fee of and in a certain close of land called the *New Orchard* in *Rumboldswick* aforesaid: and because the said sheep at the said time when, &c. were in the said close called the *New Orchard*, feeding on the grass there then growing, and doing damage there, he the said *William* in his own right, and the said *John Peckham* as the servant of him the said *William*, and by his command, at the said time when, &c. took the sheep aforesaid in the said close called the *New Orchard*, feeding on the grass then there growing, and doing damage there in the name of a distress, and impounding them in a pound overt at *Rumboldswick* aforesaid, and detained the said sheep in the pound overt aforesaid, as it was well lawful for them to do; without this, that the said *William* and *John Peckham* chased, took and impounded the said sheep in the said close called *Hurnethill*, as the said *Stephen* above complains against them; and this they are ready to verify: wherefore they pray judgment if the said *Stephen* ought to have his said action against them, &c.

Demurrer.

And the said *Stephen* saith, that the said plea of the said *William* and *John Peckham*, as to the chasing, taking and impounding of the said sheep above pleaded in bar, and the matter in the same contained, are not sufficient in law to bar him the said *Stephen* from having his action aforesaid against the said *William* and *John Peckham*, and that he to
that

that plea in manner and form aforesaid pleaded hath no necessity, nor is bound by the law of the land to answer; and this he is ready to verify: wherefore for want of a sufficient plea of them the said *William* and *John Peckham* in this behalf, he the said *Stephen* prays judgment and his damages, by the occasion aforesaid, to be adjudged to him, &c. And for cause of demurrer in law upon the said plea, the said *Stephen*, according to the form of the statute in such case made and provided, sheweth to the court here the causes following, that is to say, that the said plea is uncertain, and wants form; and the said *William* traverses matter in that plea which is not traversable.

Cause of demurrer.

Joinder in demurrer.

Michaelmas Term in the eighth Year of King William the Third. Roll 325. or 326.

Allen against Harris. 1 Ld. Raym. 122.

Winford.

Kent, *WILLIAM Harris* late of *Nockholt* in the county aforesaid, yeoman, was attached to answer to *John Allen* the younger, of a plea of trespass upon the case, &c. And whereupon the said *John* by *Henry Streetfield* his attorney complains, that whereas the said *John* on the first day of *December* in the 7th year of the reign of the lord the now king, at *Chiddingstone* in the county aforesaid, was possessed of a silk waistcoat to the value of 5*l.* as of his own proper goods and chattels; and being so possessed thereof, casually lost the goods and chattels aforesaid out of his hands and possession; which said goods and chattels afterwards, to wit, the day and year abovesaid at *Chiddingstone* aforesaid, came to the hands and possession of him the said *William*, by finding: nevertheless the said *William* knowing the goods and chattels aforesaid to be the goods and chattels of the said *John*, and to him the said *John* of right to belong and appertain, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *John* of the goods and chattels aforesaid, hath not delivered the goods and chattels aforesaid (although often requested) to him the said *John*, but afterwards, to wit, on the first day of *January* in the 7th year of the reign of the said lord the now king at *Chiddingstone* aforesaid converted

Trover for a silk waistcoat.

verted and disposed of the goods and chattels aforesaid to his own proper use, to the damage of him the said *John* of ten pounds; and thereupon he brings suit, &c.

Plea in bar.

Confesses the conversion.

But pleads that the plaintiff did discharge and acquit him in consideration of a promise made by him to pay plaintiff 20s.

And the said *William* by *Edward Goddall* his attorney comes and defends the force and injury when, &c. and saith, that the said *John* ought not to have his said action against him, because he saith, that well and true it is that he the said *William* hath converted and disposed of the said silk waistcoat to the proper use of him the said *William*, in manner and form as the said *John* by his said declaration against him above supposes: but the said *William* further saith, that after the said time when the conversion of the silk waistcoat aforesaid is above supposed to be done, to wit, on the 10th day of *January* in the 7th year of the reign of the said lord the now king at *Chiddingstone* aforesaid, in consideration that he the said *William*, at the special instance and request of him the said *John*, then and there assumed upon himself, and to the said *John* faithfully promised to pay to the aforesaid *John* twenty shillings of lawful money of *England*, when he should be thereunto requested, for the said silk waistcoat, and in full satisfaction and discharge of the charge aforesaid, he the said *John* did then and there discharge and acquit him the said *William* of the silk waistcoat aforesaid, and of the conversion aforesaid, and of all actions and demands whatsoever of and concerning the silk waistcoat aforesaid, and the conversion of the same silk waistcoat; and this he is ready to verify: wherefore he prays judgment if the said *John* ought to have his said action against him.

Demurrer.

Joinder in demurrer.

Hicks against Woodeson. 1 *Ld. Raym.* 137.
B. R.

Prohibition to the spiritual court, as to tithes.

Somersetshire, *NICHOLAS Hicks* who sues as well for (to wit,) the lord the king and lady the queen as for himself in this behalf, complains of *Samuel Woodeson*, clerk, rector of the parish church of *Huntspill*, in the county of *Somerset* aforesaid, in the custody of the marshal of the *Marshalsea*, of the lord the king and lady the queen, being before the king and queen themselves, of a plea wherefore he sued in the court christian against the royal prohibition to him before directed and delivered to the contrary thereof, for that, (to wit,) That whereas the parish of *Huntspill* in the county aforesaid is an ancient parish, and whereas the said *Nicholas* for the space of five years now last past, and more, hath been and as yet is an inhabitant within the parish aforesaid,

said, and for the whole time aforesaid hath had and occupied forty acres of land, meadow and pasture, with the appurtenances, being parcel of the manor of *Huntspill* in the said county of *Somerset* within the parish aforesaid, and the bounds, limits and titheable places of the same parish. And also whereas there are had, and from time whereof the memory of man is not to the contrary, there have been had within the same parish and the bounds, limits and titheable places of the said parish, these customs and modus's of tithing, of and concerning the tithes of lambs following, brought forth and forthcoming within the parish aforesaid, and the bounds, limits and titheable places of the same parish; and of and concerning the tithes of milch cows and heifers kept and depastured within the parish aforesaid, and the bounds, limits and titheable places of the same parish; and of and concerning the tithes of calves falling, brought forth and forthcoming within the parish aforesaid, and the bounds, limits and titheable places of the same parish; and of and concerning the tithes of colts falling, brought forth and forthcoming within the parish aforesaid, and the bounds, limits and titheable places of the same parish; and of and concerning the tithes of hay growing, renewing and forthcoming within the parish aforesaid, and the bounds, limits and titheable places of the same parish; and of and concerning the tithes of gardens and orchards, being within the parish aforesaid, and the bounds, limits and titheable places of the same parish; and of and concerning the payment of the offerings of all the men and their wives inhabiting within the parish aforesaid, and the bounds, limits and titheable places of the same parish; that is to say, that every occupier of any lands or tenements within the said parish, and the bounds, limits and titheable places of the same parish, who hath in any year kept any milch cow or heifer, or any milch cows, or heifers within the parish aforesaid, and the bounds, limits and titheable places thereof, hath paid and for all the time aforesaid hath been used and accustomed to pay to the rector of the parish church of *Huntspill* aforesaid, or to his farmer or deputy of the rectory for the time being, for every such milch cow three pence, of lawful money of *England*, and for every such milch heifer one penny and an halfpenny, of like lawful money in every such year, and no more, for all the tithes of milk of the same cows and heifers in the same year; and that every such occupier as aforesaid, who in any year hath had any lamb or any lambs under the number of seven lambs brought forth and forthcoming within the said parish, and the bounds, limits and titheable places thereof, hath paid, and for all
the

the time abovesaid hath been used and accustomed to pay to the rector of the parish church of *Huntspill* abovesaid, or to his farmer or deputy of that rectory for the time being, in the same year one halfpenny of the like lawful money for every such lamb so under the number of seven lambs brought forth and forthcoming, in full satisfaction, payment and content of all tithes of those lambs: but if the same occupier in any such year hath had within the parish abovesaid, and the bounds, limits and titheable places thereof, any lambs to the full number of seven lambs brought forth and forthcoming, then the same occupier hath rendered and delivered, and for all the time abovesaid hath been used and accustomed to render and deliver to the rector of the parish church of *Huntspill* abovesaid, or to his farmer or deputy of that rectory for the time being, one lamb of the same seven lambs in such year, in full satisfaction, payment and content, and in the name and place of the tithes of the same seven lambs, and for the number of seventeen lambs two lambs, and for every calf one halfpenny if less than seven calves, and if above seven, then one calf, and two calves for seventeen calves, and one penny for every colt, and two pence for every acre of hay, and two pence for every garden and orchard, and for every man of the age of sixteen years two pence, and for a wife two pence, for oblations. And also whereas the hundred of *Huntspill* and *Puriton* within the abovesaid county of *Somerset* is, and from time whereof the memory of man is not to the contrary, hath been an ancient hundred, within which said hundred the said parish of *Huntspill* is, and from time whereof the memory of man is not to the contrary, hath been. And whereas within the same hundred of *Huntspill* and *Puriton* there is, and for all the time abovesaid there hath been, a certain antient custom for all the time abovesaid used and approved, that all the inhabitants within the hundred abovesaid, occupying any lands, meadow or pasture within the hundred abovesaid, have been free, exempt and discharged, and from time to time for all the time abovesaid ought to be free, exempt and discharged of and from the payment of any tithes of or for the depasturing of any cattle not employed to plough or pail, by them depastured in any lands, meadow or pasture, being within the hundred of *Huntspill* and *Puriton* abovesaid, to wit, at the hundred abovesaid. And whereas the said *Nicholas* for the space of seven years next before the exhibiting the bill of the said *Nicholas* in the court here, hath been, and as yet is, an inhabitant within the hundred abovesaid, and within the said parish of *Huntspill*, and for all the same time of seven years abovesaid, did possess and occupy divers lands, meadow and pasture within the hundred and parish abovesaid, and hath depastured upon

upon the same lands, meadow and pastures, and not elsewhere, within the same time divers cattle not employed to plough or pail, that is to say, cows, heifers and colts: nevertheless the said *Samuel* well knowing the premisses, but contriving and maliciously intending unjustly to aggrieve and oppress him the said *Nicholas*, against the due form of law, and against the form and effect of the said modus's of tithing, and the custom aforesaid, and unjustly to violate the customs and prescriptions of those modus's of tithing, and also to disherit the said lord the now king and lady the now queen, and their crown, and to draw the consufance of a plea which belongs and appertains to the said lord the king and lady the queen, their royal crown and dignity, to another trial, hath drawn him the said *Nicholas* into plea, before the venerable man *Richard Heley*, doctor of laws, surrogate of the venerable man *Edwin Sandys*, clerk, archdeacon of the archdeaconry of *Wells*, lawfully constituted surrogate, or the lawful deputy of the said archdeaconry, or some other competent judge in this behalf, of and for the subtraction and non-payment of the tithes of lambs fallen, brought forth and forthcoming within the said parish, and the bounds, limits and titheable places thereof, in the years of our Lord 1689, 1690, &c. and also in the months of *March, April, May, and June*, in the year of our Lord 1693, now current, or in every one or some of the same months and years, and of and for the subtraction and non-payment of the tithes of calves within the parish aforesaid, and the bounds, limits and titheable places thereof, (so for colts, cows, heifers, hay, gardens and orchards, *mutatis mutandis*) and of and for the subtraction and non-payment of offerings of all the men and their wives inhabiting within the said parish, and the bounds, limits, and titheable places thereof, in the years and months aforesaid, or in every one or some of them, by craftily and subtilly libelling in the same court christian, against the said *Nicholas Hicks*, in and by a certain libel and a certain schedule to the same libel subscribed or annexed, against him the said *Nicholas Hicks* in the said court christian exhibited, under the form following, that is to say, first of all, that the said master *Samuel Woodeson* in the years of our Lord 1689, 1690, &c. to wit, in the months past in the same respectively concurring, and also in the months of *March, April, &c.* in the year of our Lord 1693, now current, or in every one or some of the said months and years hath been and was rector of the parish church of *Huntspill* aforesaid, and of all and singular the tithes, ecclesiastical rights and emoluments to the same rectory belonging and appertaining, and the said rectory, with all its rights, members and appurtenances rightly,
law-

lawfully, &c. canonically hath got and obtained, and the same so obtained, with all its rights and appurtenances, hath possessed and had, as he hath at this present time, (except as within written) and for the true rector and lawful possessor of the same hath been for the time aforesaid, and also at present is commonly called, held, esteemed, named and reputed, openly, publicly and notoriously; he propoundeth nevertheless, &c. And he propoundeth jointly and severally of every item, which as well of common right of this renowned kingdom of *England*, as from antient and laudable and lawful prescriptive custom, from time and through time, the beginning whereof the memory of man is not to the contrary, hitherto hath been inviolably and unshakenly used and observed, and against gainsayers hath often obtained in judgment, or at least once the right of perceiving, receiving and having all and singular the tithes as well greater as lesser, mixt and minute whatsoever, and the rest of the rights and emoluments of the church whatsoever in the schedule to these presents annexed, contained and specified within the parish of *Huntspill* aforesaid, and the bounds, limits and titheable places of the same wheresoever, whensoever, howsoever, and as often as forthcoming growing, renewing and happening to any rector there whatsoever for the time being, or his farmers, and to the said master *Samuel Woodeson*, clerk, the present rector there, hath belonged and appertained, doth belong and appertain, ought to belong and appertain, and doth and shall appertain and belong; and propoundeth as above. Also, that for 10, 20, 30, 40, 50, and 60 years last past, more or less, and also from time and through time, the beginning whereof the memory of man is not to the contrary, the rector of the said rectory of the parish church of *Huntspill* aforesaid, for their respective times successively being, and the said master *Samuel Woodeson*, clerk, the present rector there, or his predecessors, and all and every of his predecessors in successive times in the same being, in the same have been, as they ought to have been, in the quiet and peaceable possession, or as of right to perceive and have all and singular the tithes aforesaid, and have received and had them by themselves, or their predecessors, and of and upon the same have freely and fully disposed, and so it hath been and ought to be, and so the said master *Samuel Woodeson*, clerk, the rector aforesaid, hath perceived, received and had for the whole, and all the time of his incumbency in the same, in right, and in the name of his rectory, until and unto the time of the grass within written: and he propoundeth as above. Also the said *Nicholas Hicks* in the years and months aforesaid, or in one or some of them, all and singular the titheable things, fruits, rights and emoluments in the present schedule annexed,

annexed, contained and specified, within the parish of *Huntspill* aforesaid, and the bounds, limits and titheable places thereof, forthcoming, growing, renewing and happening, as in the same schedule is declared, and they are drawn out, (which said schedule the party propounding will have to be accounted as if here inserted and read, as far as it may be expedient for him, and not otherwise, or in any other manner) hath had, holden, possessed, received, and to his own proper use converted and applied; and the party propONENT propounded of every other number of things respectively titheable, and of the tithes in the schedule to these presents as above set forth annexed respectively contained and specified, more or less, and also such and such number, quality and quantity, as by lawful proofs or confession of the party in the event of this suit more fully shall come to be proved; and he propoundeth as above. Also that the true value or estimate of every titheable thing and things respectively titheable in the schedule aforesaid to these presents as before is set forth annexed, contained and specified as of the tithes or tenth part thereof to the sums or respective values in the same schedule mentioned in the months and years aforesaid, or in one or some of them, in the common estimation of men manifestly did extend, and do extend; and the party propONENT propoundeth of every other sum or value of the things respectively titheable, and of the tithes, more or less, and also of such and so much money or value, quality and quantity, as by lawful proofs in the event of this suit more fully shall come to be proved; and he propoundeth as above. Also that the said *Nicholas Hicks* to pay, give and deliver to the before-named *Samuel Woodeson*, the rector aforesaid, or to his lawful deputy in this behalf, all and singular the tithes aforesaid, so as before set forth accustomed to be paid, and especially the tithes and ecclesiastical rights and emoluments aforesaid in the schedule to these presents (so as before is set forth) annexed, mentioned and specified, or otherwise, to compound duly with the said rector for the same, or with his lawful deputy, hath oftentimes, at least once, been properly and lawfully requested and importuned, who being so requested and importuned did not take care to do the premises or any of them, nor at present doth take any care, but hath with-holden and refused to pay, but at least (more properly) with-holds and defers at present, to the great peril of his soul, and no small prejudice and grievance of the said master *Samuel Woodeson*, the rector aforesaid; and he propoundeth as above. Also that the said *Nicholas Hicks* hath been, and is an inhabitant of the said parish of *Huntspill*, manifestly under and subject to the diocese and jurisdiction of *Bath and Wells*; and he propoundeth.

poundeth as above. Also that all and singular the premises were and are true, notorious, public, manifest, and in like manner famous, and the public voice and fame have laboured of and concerning the same, as at present they labour; whereupon having given the assurance required by law in this behalf, the party of the said master *Samuel Woodeson*, the rector aforesaid, pays right and justice, and his complement thereof to be done and administered to him with effect, &c. In which said schedule annexed to the said libel as aforesaid, are contained the words following, (that is to say) first of all, that in the years and months aforesaid, all, some or one of them, upon the tenements, estate and lands which he the said *Nicholas Hicks* had held, possessed and enjoyed in the said parish of *Huntspill* and titheable places thereof, there was kept feeding and depasturing twenty ewe sheep, and of them there was yearly fallen twenty lambs, each lamb worth three shillings, and the tithe after that rate. Also that the said *Nicholas Hicks* in the months and years aforesaid, all, some or one of them, within the said parish of *Huntspill* and titheable places thereof, had and kept feeding and depasturing yearly four cows and four heifers, and for the milk of each cow he is to pay three pence, and of every heifer three half-pence, according to the custom of the said parish. Also that the said *Nicholas Hicks* of the said cows and heifers above mentioned had fallen yearly six calves, which he bred up for the pail, for each he is to pay one halfpenny, according to the custom of the said parish. Also that the said *Nicholas Hicks* the months and years aforesaid, all, some or one of them, within the parish of *Huntspill* and titheable places thereof, had held and possessed 20 acres of meadow, which he mowed, or caused to be mowed, yearly, for each acre of which there is yearly due, and he ought to pay to the rector of *Huntspill* aforesaid, for and in lieu of tithe-hay, two pence, according to the custom of the said parish. Also that the said *Nicholas Hicks* the months and years aforesaid all, some or one of them, within the said parish of *Huntspill* aforesaid, had and possessed one garden and two orchards yearly, for which there is yearly due, and he ought to pay to the rector of *Huntspill* aforesaid, three pence, according to the custom of the said parish, to wit, one penny for his garden and each orchard. Also that the said *Nicholas Hicks* the months and years aforesaid, all, some or one of them, within the parish of *Huntspill* and titheable places thereof, had and kept feeding and depasturing ten colts above one year old, which he sold away before they were used to the plough, the feeding and depasturing of each colt the months and years aforesaid, being monthly worth 4 s. and the tithe after that rate, and also had and kept feeding and depasturing the months and years

years aforesaid, all, some or one of them, in the said parish ten cows, ten heifers, ten steers and ten oxen, from the time he bought them to the time he sold them off they were never employed to the plough or pail, the herbage and depasturing of each of the said cows, heifers, steers and oxen, being monthly worth 4 s. and the tithes after that rate. Also that the said *Nicholas Hicks* the months and years aforesaid, all, some or one of them, in the said parish of *Huntspill* and titheable places thereof, had and kept four mares, and of them had fallen and received four colts yearly, for the fall of each, he is, and ought to pay to the rector of *Huntspill* aforesaid one penny, according to the custom of the said parish. Also that the said *Nicholas Hicks* hath the months aforesaid, all, or some or one of them, dwelt in the said parish of *Huntspill*, and he and his wife have received, or at least ought to have received, the holy sacrament of the Lord's Supper at their own parish church, for whose offerings he is yearly to pay to the rector at *Easter*, or thereabouts, 4 d. yearly, to wit, 2 d. for each. Also that the said *Nicholas Hicks* the months and years aforesaid, all, some or one of them, within the said parish and titheable places thereof, had kept and bred up forty head of cattle, which he sold before they came to the plough or pail, the herbage and depasturing of each of the same being monthly worth 40 s. and the tithe after that rate. Also that the said *Nicholas Hicks* the months and years aforesaid, all, some or one of them, within the said parish of *Huntspill* and titheable places thereof, had and kept 6 cows, 6 heifers, 6 steers and 6 oxen, after they had been turned off from plough and pail, the feeding and depasturing whereof until they were fat, and looked on as such, and then sold off, from the grass and herbage and depasturing of the said cows, heifers, steers and oxen, being monthly worth 5 s. and the tithe after that rate. Also that the said *Nicholas Hicks* the months and years aforesaid, all, some or one of them, had and kept feeding and depasturing 8 cows and heifers, and of them had fallen and received 8 calves yearly, each calf at 7 weeks old (which is the customary time for the tithe calf) being worth 10 s. and the tithes after that rate, as by a copy of the libel and schedule aforesaid, brought here into court and read, among other things more fully appears: and him the said *Nicholas Hicks* in the said court christian before the said spiritual judge, by occasion of the premises, hath unjustly bound to appear and answer to the said *Samuel Woodeson* of and upon the premises: and although he the said *Nicholas Hicks* in every year of the years aforesaid wherein he the said *Nicholas* had any lambs, calves or colts, any milch cows or heifers, any hay, any gardens or orchards within the parish aforesaid, and the bounds, limits and titheable places thereof, being, growing, renewing

or forthcoming, or hath dwelt within the parish aforesaid, hath been always ready and offered, and yet is still ready to pay to the said *Samuel* the said several sums of money for the tithes of lambs, calves, colts, milch cows and heifers, hay, gardens and orchards, and for the oblations aforesaid, according to the form and effect of the several modus's of tithing aforesaid: and although he the said *Nicholas* all and singular the premisses aforesaid hath pleaded and alledged in his discharge of payment of the tithes by the said *Samuel* demanded in the said court christian before the said spiritual judge, and hath often offered to prove the same by unavoidable testimony, yet the said spiritual judge hath absolutely refused to admit or receive that plea, allegation and proof; and the said *Richard Heley* with all his power endeavours and daily contrives to condemn the said *Nicholas*, by the definitive sentence of the said court christian of and upon the premisses in the libel and schedule aforesaid contained, and to compel him to pay the tithes aforesaid in form aforesaid demanded, in contempt of the said lord the now king and lady the now queen, their crown and dignity, and to the great damage, prejudice and manifest impoverishing of him the said *Nicholas Hicks*, and against the due form of law and prescription and customs and modus's of tithing aforesaid: and although the said *Nicholas Hicks* on the last day of *August* in the 5th year of the reign of the said lord *William* and lady *Mary*, now king and queen of *England, &c.* at *Huntspill* aforesaid in the county aforesaid, the writ of the said lord the king and lady the queen of prohibition to the contrary to him the said *Samuel Woodeson* delivered: nevertheless the said *Samuel Woodeson* hath not ceased to prosecute the said plea against the said *Nicholas*; but hath further prosecuted that plea in the said court christian, (notwithstanding the said writ of prohibition) in contempt of the said now lord the king and lady the queen, and contrary to the prohibition aforesaid; whereupon the said *Nicholas*, who sues as well for the said lord the king and lady the queen in this behalf, as for himself, *&c.* says, that he is injured, and hath damage to the value of 200*l.* and thereupon as well for the lord the king and lady the queen as for himself he brings suit, *&c.*

Defendant
imparls.

And now at this day, to wit, *Friday* next after the morrow of the holy *Trinity* in this same term, until which day the said *Samuel Woodeson* had leave to imparl to the bill aforesaid, and then to answer, *&c.* before the lord the king and lady the queen at *Westminster* come as well the said *Nicholas*, who sues as well, *&c.* by his attorney aforesaid, as the said *Samuel Woodeson* by *Giles Clarke* his attorney; and the said
Samuel

Samuel defends the force and injury when, &c. and all contempt and whatsoever, &c. and saith, that he hath not prosecuted the plea aforesaid against the said *Nicholas* in the court christian after the prohibition of the said lord the king and lady the queen, to him thereupon delivered, as the said *Nicholas*, who sues as well, &c. above supposes; and of this he puts himself upon the country, and the said *Nicholas*, who sues as well, &c. thereof, likewise: but for having a writ of the lord the king and lady the queen of consultation as to the tithes of lambs, for which the said *Samuel* hath drawn into plea the said *Nicholas* in the court christian aforesaid, before the said spiritual judge, he the said *Samuel* saith, that the said *Nicholas* in the months and years in the declaration aforesaid specified, had, kept and depastured upon his lands and tenements within the parish of *Huntspill* aforesaid twenty ewe sheep, and of them had twenty lambs yearly, every one of them of the value of 3 s. for the tithes of which said lambs to the same *Samuel*, as rector of the parish church aforesaid, due and payable, he the said *Samuel* drew into plea him the said *Nicholas* in the court christian aforesaid before the said spiritual judge, before the prosecuting of the said writ of prohibition, as it was lawful for him to do; without this, that within the parish of *Huntspill* aforesaid, and the bounds, limits and titheable places of that parish, there is had, and from time whereof the memory of man is not to the contrary, there hath been had, such a custom and modus of tithing of and concerning the tithes of lambs there falling, brought forth and forthcoming, to wit, that every occupier of any lands or tenements within the said parish, and the bounds, limits and titheable places of the same parish, who in any year hath had any lamb or lambs under the number of 7 lambs brought forth and forthcoming within the said parish, and the bounds, limits and titheable places thereof, and hath paid, and for all the time aforesaid hath been used and accustomed to pay to the rector of the parish church of *Huntspill* aforesaid, or to his farmers or deputy of that rectory for the time being, in the same year, one halfpenny of the like lawful money of *England*, for every such lamb so under the number of 7 lambs brought forth and forthcoming, in full satisfaction, payment and content of all tithes of those lambs; but if the same occupier in any such year hath had within the parish aforesaid, and the bounds, limits and titheable places thereof, any lambs to the full number of 7 lambs brought forth and forthcoming, then the same occupier hath rendered and delivered, and for all the time aforesaid hath been used and accustomed to render and deliver to the rector of the

Plea.

As to the tithes of lambs.

Defendant traverses the Modus.

the parish church of *Huntspill* aforesaid, or to his farmer or deputy of that rectory for the time being, one lamb of the same 7 lambs in such year, in full satisfaction, payment and content, and in the name and place of the tithes of the same 7 lambs: and if the same occupier in any one year hath had any lambs to the full number of seventeen lambs brought forth and forthcoming within the said parish, and the bounds, limits and titheable places thereof, then the same occupier hath rendered and delivered, and for all the time aforesaid hath been used and accustomed to render and deliver to the rector of the parish church of *Huntspill* aforesaid, or his farmers or deputy of the said rectory for the time being, two lambs of the same seventeen lambs in every such year, for the tithes of the same 17 lambs, as the said *Nicholas* thereof above complains; and this he is ready to verify: wherefore he prays judgment, and a writ of the said lord the king and lady the queen of consultation, as to the tithes of lambs aforesaid, to be granted to him in this behalf, &c. And for having a consultation as to the tithes of calves aforesaid, for which the said *Samuel* hath drawn into plea the said *Nicholas* in the court christian aforesaid, before the said spiritual judge, he the said *Samuel* saith, that the said *Nicholas* in the months and years aforesaid had kept and depastured upon his lands and tenements within the parish aforesaid 16 cows and heifers, and of them had 14 calves yearly fallen, brought forth and forthcoming, each of the same calves of the value of ten shillings, for the tithes of which said calves to the same *Samuel*, as rector of the parish church aforesaid, due and payable, he the said *Samuel* drew into plea him the said *Nicholas* in the court christian aforesaid, before the said spiritual judge, before the prosecuting of the said writ of prohibition, as it was lawful for him to do; without this, that within the parish of *Huntspill* aforesaid, and the bounds, limits and titheable places thereof, there is had, and from time whereof the memory of man is not to the contrary, there hath been had, a custom that every occupier of any lands or tenements within the parish aforesaid, and the bounds, limits and titheable places of the same parish, who had any calf or any calves under the number of 7 calves in any year brought forth and forthcoming within the said parish, and the bounds, limits and titheable places thereof, and hath paid, and for all the time aforesaid hath used and been accustomed to pay to the rector of the parish church of *Huntspill* aforesaid, or his farmers or deputy of that rectory for the time being, in every such year one half-penny,

The like for
calves.

Traverse as to
calves, &c.

penny, of the like lawful money for each of the said calves, in full satisfaction, payment and content of all the tithes of those calves; but if the same occupier (as before in the traverse as to lambs). And for having a consultation as to tithes for depasturing of colts, cows, steers, heifers and oxen not employed to plough or pail, and also other unfruitful cattle within the parish aforesaid depastured, for which he the said *Samuel* hath drawn into plea the said *Nicholas* in the court christian aforesaid, before the said spiritual judge, he the said *Samuel* saith, that the said *Nicholas* in every year of the years aforesaid had, kept and depastured upon his lands and tenements aforesaid within the parish aforesaid, colts, cows, heifers and oxen, not employed to the plough or pail, and other unfruitful cattle in the declaration aforesaid mentioned, for the tithes of depasturing of which said cattle to him the said *Samuel*, as rector of the parish church aforesaid, due and payable, he the said *Samuel* drew into plea him the said *Nicholas* in the court christian aforesaid, before the said spiritual judge, before the prosecuting of the said writ of prohibition, as before is set forth, as it was lawful for him to do; without this, that within the said hundred of *Huntspill* and *Puriton* there is, and for all the time aforesaid there hath been an ancient custom for all the time aforesaid used and approved, that all the inhabitants within the hundred aforesaid occupying any lands, meadow or pasture within the hundred aforesaid have been free, exempt and discharged, and from time to time for all the time aforesaid ought to be free, exempt and discharged of and from the payment of any tithes of or for the depasturing of any cattle not employed to plough or pail, by them depastured in any lands, meadow or pasture, being within the hundred of *Huntspill* and *Puriton* aforesaid, as the said *Nicholas* above complains; and this he is ready to verify: wherefore he prays judgment, and the writ of the said lord the king and lady the queen of consultation, as to the tithes for the depasturing of cattle not employed to plough or pail, and of other unfruitful cattle, for which the said *Samuel* hath drawn into plea him the said *Nicholas* in the court christian aforesaid, as before is set forth in this behalf, to be granted to him, &c. And for having the writ of the said lord the king and lady the queen of consultation as to the offerings aforesaid, the tithes of milch cows and heifers aforesaid, the tithes of hay aforesaid, the tithes of gardens and orchards aforesaid, and the said tithes of the said four colts in the parish aforesaid yearly fallen, for which

And so also for
all the other
matters.

Traverse as to
custom in the
hundred in non
decimando.

he

Demurrer to
part.

Replication.

Takes issue on
the traverse of
the *modus* as to
lambs.

he the said *Samuel* hath drawn into plea him the said *Nicholas* in the court christian aforesaid; the said *Samuel* prays judgment of the declaration aforesaid, because he saith, that the said declaration, and the matter in the same contained, are not sufficient in law to compel him the said *Samuel* to answer to that declaration, as to the same oblations and tithes; to which the said *Samuel* hath no necessity, nor is bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient declaration in this behalf, he the said *Samuel* prays judgment of the declaration aforesaid, and that the said declaration as to the said oblations and tithes may be quashed, and that the writ of the said lord the king and lady the queen may be thereupon granted to him, &c. And the said *Nicholas* saith, that by any thing by the said *Samuel* above in pleading alledged, he the said *Samuel* ought not to have the writ of the said lord the king and lady the queen of consultation: because as to the said plea of the said *Samuel* in manner and form above pleaded, as to the tithes of lambs, for which the said *Samuel* hath drawn into plea him the said *Nicholas* in the court christian aforesaid, before the said spiritual judge, he the said *Nicholas* as before saith, that within the parish of *Huntspill* aforesaid, and the bounds, limits and titheable places of that parish, there is had, and from time whereof the memory of man is not to the contrary, there hath been had such a custom and modus of tithing, of and concerning the tithes of lambs there falling, brought forth and forthcoming, to wit, that every occupier of any lands or tenements within the said parish, and the bounds, limits and titheable places of the same parish, who in any year hath had any lamb or lambs under the number of 7 lambs, brought forth and forthcoming within the said parish, and the bounds, limits and titheable places thereof, hath paid, and for all the time aforesaid hath been used and accustomed to pay to the rector of the parish church of *Huntspill* aforesaid, or to his farmers or deputy of that rectory for the time being, in the same year, one halfpenny of the like lawful money of *England*, for every such lamb so under the number of 7 lambs brought forth and forthcoming, in full satisfaction, payment and content of all tithes of those lambs: but if the same occupier in any such year hath had within the parish aforesaid, and the bounds, limits and titheable places thereof, any lambs to the full number of 7 lambs brought forth and forthcoming, then the same occupier hath rendered and delivered, and for all the time aforesaid hath been used

used and accustomed to render and deliver to the rector of the parish church of *Huntspill* aforesaid, or to his farmer or deputy of that rectory for the time being, one lamb of the same 7 lambs in such year, in full satisfaction, payment and content, and in the name and place of the tithes of the same 7 lambs; and if the same occupier in any one year hath had any lambs to the full number of 17 lambs brought forth and forthcoming within the said parish, and the bounds, limits and titheable places thereof, then the same occupier hath rendered and delivered, and for all the time aforesaid hath been used and accustomed to render and deliver to the rector of the parish church of *Huntspill* aforesaid, or his farmer or deputy of the said rectory for the time being, two lambs of the same 17 lambs, as the said *Nicholas* above thereof complains; and this he prays may be inquired of by the country, and the said *Samuel* likewise, &c.

The like replications and issues joined upon the other traverses, as to the modus for calves, and as to the custom alledged in *non decimando* in the hundred of *Huntspill*. And a joinder in demurrer as to the rest.

Pleas before the Lord the King at Westminster of the Term of Saint Michael in the eighth Year of the Reign of the Lord William, now King of England, &c. Roll 123.

Chamberline against Harvey. 1 Ld. Raym: 146.

London, **B**E it remembered, that on *Wednesday* next after (to wit) three weeks of *Saint Michael* in this same term, before the lord the king at *Westminster* came *Willoughby Chamberline*, esq; by *Godfrey Woodward* his attorney, and brought here into the court of the said lord the king then there his certain bill against *Robert Harvey*, esq; in custody of the marshal, &c. of a plea of trespass; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *London*, to wit, *Willoughby Chamberline*, esq; complains of *Robert Harvey*, esq; in custody of the marshal of the *Marshalsea* of the lord the king, being before the king himself, for that the said *Robert* on the first day of *September* in the year of our Lord 1695, with force and arms, one

Count in trespass for a negro slave.

negro of him the said *William*; of the price of 100*l.* of lawful money of *England*, at *London* aforesaid, to wit, in the parish of the *Blessed Mary of the Arches* in the ward of *Cheape*, took and led away from him, and then and there detained and kept possession of the negro aforesaid from the said first day of *September* until the exhibiting of this bill, so that he the said *Willoughby* totally was without, and lost the use and benefit of the said negro for the whole time aforesaid, and other wrongs to the said *Willoughby* then and there did, against the peace of the said lord the now king, to the damage of him the said *Willoughby* of 150*l.* and thereupon he brings suit, &c.

Not guilty.

And the said *Robert* by *Robert Stone* his attorney comes and defends the force and injury when, &c. and saith, that he is not thereof guilty in manner and form as the said *Willoughby* above complains against him; and of this he puts himself upon the country, and the said *Willoughby* thereupon likewise: therefore let a jury thereupon come before the lord the king at *Westminster* on *Thursday* next after the morrow of *All Souls*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards the process thereupon is continued between the parties aforesaid in the plea aforesaid, by the jury being respited thereupon between them, before the lord the king at *Westminster* until *Thursday* next after fifteen days of *Saint Martin*, unless the lord the king's trusty and well-beloved *John Holt*, knt. chief justice of the lord the king, assigned to hold pleas in the court of the said lord the king himself, shall before come on *Wednesday* next after 15 days of *Saint Martin* at *Guildhall*, *London*, by form of the statute, for want of jurors, &c. At which day before the lord the king at *Westminster* cometh the said *Willoughby* by his said attorney, and the said chief justice before whom, &c. hath sent here his record before him had in these words: Afterward on the day and at the place within contained, before *John Holt*, knt. chief justice of the lord the king, assigned to hold pleas in the court of the said lord the king before the king himself, come as well the within named *Willoughby Chamberline*, esq; as the within written *Robert Harvey*, esq; by their attornies within contained; and the jurors of the jury, whereof mention is within made, being called, certain of them, to wit, *Thomas Sericole*, *Richard Martin*, *Samuel Stone*, *Benjamin Hodgson*, *Jeremiah Barratt* and *Nathaniel Spinlow* came; and are sworn upon that jury; and because the rest of the jurors of the same jury did not appear, therefore others of the by-standers, by the sheriffs of

Nisi prius.

Postea

*Tales de circum-
stantiis.*

London aforesaid, being chosen to this, at the request of the said *Willoughby Chamberline*, and by the command of the chief justice aforesaid newly appointed, whose names are affixed in the panel within written, according to the form of the statute in such case made and provided; and the jurors so newly appointed, to wit, *Thomas Pool, Richard Martin, Thomas Ward, John Watson, Philip Brewster* and *Richard Chauncey* being called likewise come, who being chosen, tried and sworn to speak the truth concerning the matter within contained, together with the other jurors aforesaid before impanelled and sworn, say upon their oath, that one *Edward Chamberline* long before the within written time when, &c. was seized of a certain plantation in the island of *Barbadoes* in the *West-Indies* in parts beyond the seas in his demesne as of fee, and of certain negro slaves, being slaves belonging and appertaining to the same plantation; and the aforesaid negro slave long before the within written time when, &c. was born within the island aforesaid of negro parents, slaves belonging and appertaining to the same plantation; and that, long before the within written time when, &c. to wit, on the 29th day of *April* in the year of our Lord 1668, by one *William Willoughby*, deputy governor, council and assembly, being the representatives of that island in that behalf lawfully authorized and commissioned at the island aforesaid, it was enacted in these *English* words following, *Barbadoes*, An act declaring the negro slaves of this island to be real estates: whereas a very considerable part of the wealth of this island consists in our negro slaves, without whose labour and service we shall be utterly unable to manage our plantations here, thereby relieving our wants, and bringing that considerable increase of revenue which this place affords to his majesty's coffers, as well here as in *England*; and whereas some law-suits have arisen, and other great inconveniencies have followed, where divers persons dying intestate have left their right and interest of their negro slaves to be by law disputed between their heirs, executors and administrators, wherein the various judgments and affections of several courts or jurors have sometimes found for one, and at other times for the other; for a full remedy of these inconveniencies, and to the intent that the heirs and widow who claim dower may not have bare lands without negroes to manure the same, and also that the condition, right and interest of negroes, to all other ends and purposes may be fully known and determined, the deputy governors, council and assembly, being willing that all ambiguities herein should be removed,

moved, and the law in this case be declared and put in a certainty, have ordained and enacted by the deputy governor, council and assembly, and by the authority of the same, that from and after publication hereof, all negro slaves in all courts of judicature, and other places within this island, shall be held, taken and adjudged to be estates real, and not chattels, and shall descend unto the heir or widow of any person dying, according to the manner and custom of lands of inheritance held in fee-simple; provided always, that no person selling or alienating any of his or her negroes, is hereby held or obliged to cause such sale or alienation to be inrolled, as is accustomed to be done and required by the laws of this island, as in all other real estates; any usage, custom or law to the contrary notwithstanding. Provided this act, or any thing therein contained, shall not be taken and deemed to extend unto any merchant, factor or agent, bringing negro slaves to this island, and having the consignments of any slaves under them, but that in all respects they, their executors, administrators or assigns, may hold, possess and enjoy such slaves or negroes in such condition as they might have done before the making of this act, until sale of such slave or slaves hath been made in the island, as by that act more fully appears. And that the said *Edward Chamberline* long before the said time when, &c. at the island aforesaid died seised of his like estate of and in the plantation and negro slaves aforesaid thereunto belonging; by and after whose death, one third part of the plantation and negro slaves aforesaid, whereof, the negro in the declaration aforesaid mentioned was one, descended to *Mary*, the widow and relict of the said *Edward Chamberline*, in the name of her dower, by the laws of the island aforesaid; and the reversion of the said third part descended to the said *William Chamberline*, as the son and heir of the said *Edward*; and being so seised, the said *Mary* afterwards and long before the time when, &c. took for her husband one *John Witham*, kn. by which, the said *John Witham* was seised in right of his said wife of one third part of the plantation and negro slaves for the term of the life of his said wife; and the said *John Witham* being so seised, the within named negro, a true native, long before the within written time when, &c. to wit, in the 30th year of the reign of *Charles* the second, late king of *England*, brought within this kingdom of *England*, and afterwards, the said negro slave above-mentioned remained in the service of him the said *John* within this kingdom of *England* for the space of divers years, from that time and before the said time when, &c. according to the

rites

rites of the church of *England*, but without the knowledge or consent of the said *Willoughby Chamberline*, there was baptized; and that the said *John Witham* afterwards, and after the death of his said wife; but long before the said time when, &c. within this kingdom of *England* absolutely put the said negro slave out of his service; and also afterwards and before the said time when, &c. the said negro slave served other subjects of this kingdom of *England*, and at the within written time when, &c. within this kingdom of *England* was retained in the actual service of the said *Robert Harvey*, to take of the said *Robert Harvey* according to the rate of six pounds by the year for his wages in that behalf: but whether upon the whole matter aforesaid, by the jury aforesaid in form aforesaid found, the said *Robert Harvey* be guilty of the trespass within specified or not, the jurors aforesaid are wholly ignorant, and pray the advice of the court here concerning the premisses; and if upon the whole matter aforesaid, by the jury aforesaid in form aforesaid found, it shall seem to the justices and the court here that the said *Robert Harvey* be guilty of that trespass, then the said jurors say upon their oath, that the said *Robert Harvey* is guilty of the trespass aforesaid, as the said *Willoughby Chamberline* within complains against him; and they assess the damages of him the said *Willoughby*, by occasion of the trespass aforesaid, besides his costs and charges, to fifty pounds; and for his costs and charges three shillings and four pence; and if upon the whole matter aforesaid, by the jury aforesaid in form aforesaid found, it shall seem to the same justices here that the said *Robert Harvey* be not guilty of the trespass aforesaid, then they the said jurors say upon their oath, that the said *Robert Harvey* is not guilty of the trespass aforesaid, as he the said *Robert* hath within in pleading alledged: and because the justices here are not yet advised, &c.

Hilary Term in the seventh Year of King William
the Third. Roll 1684. C. B.

Kimp against Cruwes and Others. 1 Ld. Raym.
167.

Trespas for
breaking plain-
tiff's close and
taking 3 cows.

Devonshire, **H**UMFREY Cruwes late of *Morchard* (to wit) *Cruwys* in the county aforesaid, yeoman, *Joan Wood* late of the same, spinster, *William Parker* late of the same, husbandman, and *Thomas Wood* late of *Stockly Pomeroy* in the county aforesaid, husbandman, were attached to answer to *John Kimp* of a plea, wherefore with force and arms the close of him the said *John*, at the parish of *Morchard Cruwys* in the county aforesaid, they broke and entered, and the cattle of him the said *John* of the price of 15 l. at the parish of *Morchard Cruwys* aforesaid lately found they took, and those cattle unto a certain pound in the parish of *Witheridge* in the county aforesaid they drove and chased, and in that pound impounded, and those cattle in that pound there for a long time detained, and other wrongs to him did, to the great damage of him the said *John*, and against the peace of the lord the now king, &c. And whereupon the said *John* by *George Palmer* his attorney complains, that the said *Humfrey*, *Joan*, *William* and *Thomas*, on the ninth day of *October* in the 7th year of the reign of the lord the now king, with force and arms, &c. the close, to wit, one close called the *Broad Close* of him the said *John*, at the parish of *Morchard Cruwys* in the county aforesaid, they broke and entered, and the cattle, that is to say, three cows of him the said *John* of the price, &c. at *Morchard Cruwys* aforesaid lately found they took, and those cattle unto a certain pound in the parish of *Witheridge* in the county aforesaid they drove and chased, and in that pound impounded, and those cattle in that pound for a long time, to wit, for the space of forty and eight hours detained, and other wrongs, &c. to the great damage, &c. and against the peace, &c. whereupon he saith that he is injured, and hath damage to the value of 40 l. and thereupon he brings suit, &c.

One defendant
pleads not
guilty.

And the said *Humfrey*, *Joan*, *William* and *Thomas*, by *Nathaniel Rider* their attorney come and defend the force and injury when, &c. And the said *Joan* saith that she is not guilty of the trespass aforesaid, as the said *John* above complains against her; and of this she puts herself upon the country, and the said *John* likewise. And the said *Humfrey*,
William

William and *Thomas*, as to the coming with force and arms, and also the breaking and entering of the close aforesaid, called *Broad Close*, say, that they are not guilty thereof; and of this they put themselves upon the country, and the said *John Kimp* likewise. And as to all the residue of the trespass aforesaid above supposed to be done, they the said *Humfrey*, *William* and *Thomas* say, that the said *John Kimp* ought not to have his said action thereof against them, because they say, that the place in which they took the cattle aforesaid in the declaration aforesaid specified is, and at the same time when, &c. was, three acres of meadow, called and known by the name of the *Bushment Meadow*, lying in *Morchard Cruwys* aforesaid, of which said three acres of meadow, with the appurtenances, in which, &c. and also of certain closes of pasture called *Great Broad Park* and *Little Broad Park* in *Morchard Cruwys* aforesaid, the said *Humfrey* and one *Thomas Mocke* before the said time when, &c. were possessed for a certain term of 15 years, which is yet unexpired; and being so possessed thereof, they the said *Humfrey* and *Thomas* on the 4th day of *February* in the 6th year of the reign of the lord *William*, now king of *England*, &c. at *Morchard Cruwys* aforesaid, demised to one *William Williams* the said 3 acres of meadow, with the appurtenances, in which, &c. they the said *Humfrey*, *William* and *Thomas*, the cattle aforesaid as aforesaid took, and the said pasture called *Great Broad Park* and *Little Broad Park*, containing in the whole by estimation 20 acres, or thereabouts, or more or less, together with all ways, paths, hedges, banks, easements and commodities whatsoever to the same several closes belonging or appertaining, except and always reserved out of that demise to them the said *Humfrey* and *Thomas Mocke*, their executors and administrators, all timber trees, saplings and trees likely to become timber, growing or increasing in and upon the premises; and also except the coppice and hedge thereunto belonging, and the wood there growing and increasing with all the usual ways and paths to the coppice aforesaid, and one way through the *Broad Park* to a certain piece of land called the *Mildourne*, in, upon and over the before demised premises, during the term to him the said *William Williams* granted; to have and to hold the said demised premises, and every part and parcel thereof, (except as before excepted) to him the said *William Williams*, his executors administrators and assigns, from and immediately after the 25th day of *March* then last past, for and during the full and whole term of nine years from thence next following, fully to be compleat and ended, he the said *William Williams*,

his

The others not guilty as to the *vi & armis* and breaking and entry.

And justify the taking the cows as a distress for rent.

his executors, administrators, and assigns, yielding and paying therefore yearly and every year to the said *Humphrey* and *Thomas Mocke*, their executors, administrators and assigns, the annual rent or sum of 7*l.* of lawful *English* money, at the four most usual feasts or days of payment in the year, that is to say, the nativity of *St. John* the baptist, *St. Michael* the archangel, the nativity of our Lord God, and the annunciation of the blessed lady the holy virgin *Mary*, by equal portions: by virtue of which said demise the said *William Williams* into the said demised premises, with the appurtenances, whereof, &c. long before the said time when, &c. entered, and was and yet is thereof possessed for the term aforesaid, and three pounds and 10*s.* of the rent aforesaid for half of an year, ended upon the feast of *St. Michael* the archangel, in the 7th year of the reign of the lord *William*, now king of *England*, &c. aforesaid, at the said time when, &c. were in arrear, and to the said *Humphrey* and *Thomas* are yet unpaid; wherefore the said *Humphrey*, in right of him the said *Humphrey*, and of the said *Thomas Mocke*, and the said *William* and *Thomas Wood*, as the servants of them the said *Humphrey* and *Thomas Mocke*, and by their command, into the said three acres of meadow in which, &c. at the said time when, &c. entered, and the cattle aforesaid in the declaration aforesaid above specified in the name of a distress for the said rent as aforesaid being in arrear, in the same three acres of meadow called *Bushment Meadow*, at the said time when, &c. took, and those cattle unto the pound overt, at *Witheridge* aforesaid in the county of *Devon* aforesaid, at the said time when, &c. drove, and there in the pound overt impounded and detained for the space of time aforesaid in the said declaration above-mentioned, in the name of a distress for the rent so as aforesaid being in arrear, as it was lawful for them to do; and this they are ready to verify: wherefore they pray judgment if the said *John Kimp* ought to have his said action thereof against them, &c.

Replication that
the cattle were
not levant and
couchant

And the said *John Kimp* as to the said residue of the trespass aforesaid saith, that he by any thing before alledged ought not to be barred from having his said action thereof, because protesting that the cattle aforesaid at the said time when, &c. were taken in the said close called the *Bread Close* in *Morchard Cruwys* aforesaid, in the said declaration above-mentioned: nevertheless for plea the said *John* saith, that the cattle aforesaid at the time of taking of the same cattle were not levant and couchant in and upon the said three acres of meadow, called *Bushment Meadow*; and this he is ready to verify: wherefore he prays judgment
and

and his damages for the residue of the trespass aforesaid, to be adjudged to him, &c.

And the said *Humfrey, William and Thomas* say, that the cattle aforesaid at the time of taking of the same cattle were levant and couchant in and upon the said three acres of meadow called *Bushment Meadow*; and of this they put themselves upon the country, and the said *John* likewise: therefore as well to try that issue, as the said other issues between the parties aforesaid above joined, the sheriff is commanded that he cause to come here in 8 days of the purification of the blessed *Mary*, twelve, &c. by whom, &c. and who neither, &c. to take cognizance, &c. because as well, &c. At which day the jury between the parties aforesaid of the plea aforesaid is thereupon respited between them here until this day, that is to say, from *Easter* day in 15 days then next following, unless the justices of the lord the king, assigned to take the assizes in the county aforesaid, by form of the statute, &c. on *Saturday* the 28th day of *March* next past, at the castle of *Exeter* in the county aforesaid, shall first come: and now here at this day comes the said *John* by his attorney aforesaid, and the said justices before whom at the assizes, &c. have sent here their record in these words: Afterwards on the day and at the place within contained, before *Littleton Powis*, knt. one of the barons of the exchequer of the lord the king, and *Francis Swanton*, esq; to the said *Littleton Powis* and *John Holt*, knt. chief justice of the said lord the king, assigned to hold pleas before the king himself, justices of the said lord the king, assigned to take the assizes in the county of *Devon*, by form of the statute, &c. for this time associated, the presence of him the said *John Holt* not being expected, by virtue of the writ of the said lord the king of *Si non omnes*, &c. came the within named *John Kimp* by his attorney within contained, and the within named *Humfrey Cruwys, Joan Wood, William Parker and Thomas Wood*, although solemnly called came not, but made default: therefore the jury, whereof mention is within made, is taken against them by default; and the jurors of that jury being called, some of them, to wit, *John Partridge, Nicholas Crook, Benjamin Bidgood, Peter Hole, George Ayre, William Carr and William Vogures* came, and are sworn upon that jury; and because the rest of the jurors of the same jury did not appear, therefore others of the by-standers by the sheriff of the county aforesaid being chosen for this purpose, at the request of the said *John Kimp*, and by the command of the justices aforesaid newly appointed, whose names are assiled in the panel within written, according to the form of the statute in such case lately made and provided; and the jurors so newly appointed, to wit, *Jonas Philips, William Avant, Richard*

Rejoinder that they were, and issue joined.

Nisi prius.

Postea.

Talem.

Verdict for the
plaintiff on all
the three issues.

Curia advisare
vult.

Richard Parcey, John Hooper and James Newton being called likewise came, who being chosen, tried and sworn to speak the truth concerning the matters within contained, together with the other jurors aforesaid before impanelled for this purpose, as to the issue within written between the said *John Kimp* and the said *Joan Wood* within joined, say upon their oath, that the said *Joan* is guilty of the trespass within written, as the said *John* within thereof complains against her: and as to the first issue within written between the said *John Kimp* and the said *Humfrey Cruwys, William Parker and Thomas Wood* within joined, as to the coming with force and arms, and also the breaking and entering of the close within mentioned, called *Broad Close*, they say upon their oath, that the said *Humfrey Cruwys, William Parker and Thomas Wood* are thereof guilty, as the said *John Kimp* within thereof complains against them: and as to the other issue within written between the said *John Kimp* and the said *Humfrey Cruwys, William Parker and Thomas Wood* within likewise joined, the jurors aforesaid upon their said oath further say, that the cattle within mentioned, at the within written time of the taking of the said cattle, were not levant and couchant in and upon the within mentioned three acres of meadow called *Bushment Meadow*, as the said *John Kimp* within in pleading hath alledged; and they assents the damages of him the said *John Kimp*, by occasion of the trespass within specified, besides his costs and charges by him about his suit in this behalf laid out, to 40 s. and for those costs and charges to 40 s. And because the justices here will advise themselves of and upon the premisses before they give judgment thereupon, day is given to the parties aforesaid here until the morrow of the holy *Trinity*, to hear their judgment thereupon, for that the said justices here are not yet thereof, &c. At which day here come as well the said *John* as the said *Humfrey, Joan, William and Thomas*, by their attornies aforesaid: and because the justices here will further advise themselves of and upon the premisses before they give judgment thereupon, day is further given to the parties aforesaid here until in three weeks from the day of Saint *Michael*, to hear their judgment thereupon, for that the said justices here are not yet thereof, &c. At which day here come as well the said *John* as the said *Humfrey, Joan, William and Thomas*, by their attornies aforesaid: and because the justices here will further advise themselves of and upon the premisses before they give judgment thereupon, day is further given to the parties aforesaid here until in eight days of Saint *Hilary*, to hear their judgment thereupon, for that the said justices are not yet thereof, &c. At which day here

here come as well the said *John* as the said *Humfrey, Joan, William* and *Thomas*, by their attornies aforesaid: and upon this, the premisses being seen, and by the justices here fully understood, it is considered, that the said *John* do recover against the said *Humfrey, Joan, William* and *Thomas*, his damages aforesaid to 80 s. by the jury aforesaid, in form aforesaid assessed, and also eighteen pounds 16 s. 8 d. to the said *John* at his request, for his costs and charges aforesaid, by the court here of increase adjudged; which said damages in the whole amount to 22 l. 16 s. and 8 d. &c.

Final judgment
for plaintiff.

Easter Term in the eighth Year of the Reign of King
William the Third. Roll 331.

Hoole against Bell, and Others. 1 Ld. Raym.
172.

Winford.

Yorkshire, **R**OBERT Bell late of Sheffield in the county (to wit) aforesaid, yeoman, Godfrey Barnes late of Gleadleys, in the county aforesaid, yeoman, John Yelland late of Sheffield aforesaid in the county aforesaid, yeoman, and George Turner late of Sheffield aforesaid in the county aforesaid, yeoman, were summoned to answer to Mary Hoole, widow, of a plea wherefore they took the cattle of her the said Mary, and unjustly detained them against gages and pledges, &c. And whereupon the said Mary by John Dickson her attorney complains, that the aforesaid Robert Godfrey, John Yelland and George, on the 11th day of November in the 7th year of the reign of the lord the now king, at Tinsley, in a certain place there called the Stable, took the cattle of her the said Mary, to wit, four horses, and unjustly detained them, against gages and pledges, until, &c. Whereupon she saith that she is injured, and hath damage to the value of 30 l. and thereupon she brings suit, &c.

And the aforesaid Robert Bell, Godfrey Barnes, John Yelland and George Turner, by William Banks their attorney, come and defend the force and injury when, &c. and as bailiffs of Robert Knollys, gent. executor of the will of Francis Knollys, esq; deceased, well acknowledge the taking of the cattle aforesaid, in the said place in which, &c. and justly, &c. because they say, that the same place in which the taking of the cattle aforesaid is supposed to be done contains,

Cognizance as
bailiffs of an
executor.

contains, and at the said time when the taking of those cattle is supposed to be done, did contain in itself one stable, with the appurtenances, in *Tinsley* aforesaid; which said stable, with the appurtenances, is, and at the said time when, &c. and also from time whereof the memory of man is not to the contrary, hath been parcel of the manor of *Tinsley*, otherwise *Tinslawe*, with the appurtenances, in the county aforesaid, of which said manor, with the appurtenances, whereof the said place in which, &c. is, and at the said time when, &c. was, and also for all the time aforesaid hath been parcel, the right honourable *William* late earl of *Strafford* deceased, in his life-time long before the said time when, &c. to wit, on the 23d day of *March* in the 29th year of the reign of the lord *Charles* the second, late king of *England*, &c. (among other things) was seised in his demesne as of fee; and being so seised thereof, the said late earl afterwards in his life-time, and before the said time when, &c. to wit, on the said 26th day of *March* in the 29th year of the reign of the lord the late king abovesaid, at *Tinsley* aforesaid, by his certain writing indented, then and there made between the said late earl, by the name of the right honourable *William* earl of *Strafford*, knight of the most noble order of the garter, and one of his majesty's privy council, of the one part, and the said *Francis Knollys* in his life-time, by the name of *Francis Knollys* of *Saint Paul's Covent Garden* in the county of *Middlesex*, esq; of the other part; one part of which, sealed with the seal of the said late earl, the aforesaid *Robert Bell*, *Godfrey*, *John* and *George* bring here into court, the date whereof is the same day and year, for and in consideration of the good and faithful service of the aforesaid *Francis Knollys* then done, and then afterwards to be done and performed, for the said late earl, and also of five shillings of good and lawful money of *England* to him the said late earl then in hand paid, and for divers other good causes and considerations him thereunto moving, had given and granted, and by the same writing indented for himself and his heirs gave and granted to the said *Francis Knollys* a certain annuity or yearly rent-charge of sixty pounds of good and lawful money of *England*, to be issuing and payable out of all that manor or lordship of *Tinsley*, otherwise *Tinslawe* aforesaid, with all and singular its rights, members and appurtenances, in the aforesaid county of *York*, and out of all and singular the messuages, cottages, lands, tenements and hereditaments whatsoever within the towns, villages, parishes, hamlets, precincts or territories of *Catchiffe*, *Whitbill*, *Orgrave* and *Bramford*, and every or any of them in the said county of *York*, and out of all and singular the messuages,

Grant of a rent-charge.

suages, cottages, houses, edifices, buildings, barns, stables, orchards, gardens, lands, tenements, meadows, pastures, feedings, commons, common of pasture, moors, marshes, rents, reversions, services, profits, commodities, emoluments and hereditaments whatsoever, with the appurtenances, to the said manor or lordship belonging, or before used, taken, reputed, occupied or enjoyed as part or parcel thereof; to have, hold, and yearly to receive, perceive and take the said annuity or yearly rent-charge of 60*l.* to him the said *Francis Knollys* and his assigns, from and immediately after the date of the same writing, for and during the term of his natural life, to be paid at two feasts or days in the year, that is to say, at the feast of *Pentecost*, and the feast of *Saint Martin* the bishop in winter, by equal portions; the first payment to begin and be made upon the feast of *Pentecost* next ensuing the date of the same writing: and if it should happen that the said annuity or yearly rent-charge of 60*l.* or any part thereof, should be in arrear or unpaid in part or in the whole for the space of 20 days next after any of the said feasts in which it ought to be paid as aforesaid, being lawfully demanded, that then and in such case it should be lawful to and for the said *Francis Knollys*, or his assigns, into the said manor or lordship, lands, tenements, and hereditaments before mentioned, or into any part or parcel thereof, to enter and distrain for the said annuity or yearly rent-charge of 60*l.* or such part thereof as should happen to be in arrear and unpaid; and the distress or distresses then and there found, to take, lead, chase and carry away and impound, and impounded to detain and keep until he or they should be fully satisfied and paid the said annual rent and all arrearages thereof, if any should be, as by the said writing indented here brought into court (among other things) is more fully manifest and appears: by virtue of which said gift and grant the said *Francis Knollys* was seised of the aforesaid annuity or yearly rent of 60*l.* in his demesne as of freehold for the term of his life; and thereupon being so seised of the rent aforesaid, the said *Francis Knollys* afterwards and long before the said time when, &c. to wit, on the 15th day of *May* in the 6th year of the reign of the lord *William* the now king and lady *Mary* late queen of *England*, &c. at *Tinsley* aforesaid made his last will and testament in writing, and by the same will made and appointed the said *Robert Knollys* sole executor thereof; and afterwards and after the feast of *Pentecost* in the 6th year of the reign of the said lord the king and the late lady the queen aforesaid, and before the said time when, &c. to wit, on the tenth day of *July* in the same year at *Tinsley* aforesaid the said *Francis Knollys* died

Clause of distress.

seised

seised of such his estate of and in the rent¹ aforesaid; after whose death, and before the said time when, &c. to wit, on the 18th day of *July* in the 6th year abovesaid, at *Tinsley* aforesaid, the said *Robert Knollys* took upon himself the burthen of the execution of the will aforesaid, and proved the same will according to the ecclesiastical laws of this kingdom of *England*, and the said *Robert* was executor of the will aforesaid at the time when, &c. and always after the death of the said *Francis Knollys* hitherto hath been, and yet is so. And because 1020*l.* of the rent aforesaid for 17 years, ending at the said feast of *Pentecost* in the 6th year abovesaid to the said *Francis Knollys* in his life-time, and to the said *Robert Knollys* after the death of him the said *Francis* for the space of 20 days next after that feast at the same time when, &c. were in arrear and unpaid, they the said *Robert Bell*, *Godfrey Barnes*, *John Yelland* and *George*, as bailiffs of the said *Robert Knollys*, executor of the said will of the said *Francis*, well acknowledge the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. in parcel of the lands and tenements aforesaid (as a distress of the said *Robert Knollys*, as executor of the said will of the said *Francis Knollys*, in form aforesaid, according to the form of the statute in such case made and provided) charged and bound for the said 1020*l.* of the rent aforesaid so being in arrear; and the said *Robert Bell*, *Godfrey*, *John* and *George* bring here into court the letters testamentary of the said *Francis Knollys*, whereby it sufficiently appears to the court here that the said *Robert Knollys* is executor of the will aforesaid, and ought to have the administration, &c.

For rent in arrear due to the testator in his life-time, they acknowledge the taking of the cattle.

Demurrer.

And the said *Mary Hoole* saith, that the said cognizance of the aforesaid *Robert*, *Godfrey*, *John* and *George* above made, and the matter in the same contained, are not sufficient in law for them justly to acknowledge the taking of the cattle aforesaid in the said place in which, &c. and that she to that cognizance in manner and form aforesaid made, hath no necessity, nor is she bound by the law of the land to answer; and this she is ready to verify: wherefore for want of a sufficient cognizance in this behalf the aforesaid *Mary Hoole* prays judgment and her damages, by occasion of this taking and unjustly detaining the said cattle, to be adjudged to her, &c. And for cause of demurrer in law upon the said cognizance of the said *Mary*, according to the form of the statute in such case made and provided, shews, and to the court here demonstrates this cause following, to wit, for that it doth not appear by the said cognizance that the said 1020*l.* were ever demanded, or that any part thereof was ever demanded, &c.

Cause of demurrer.

And

And the said *Robert Bell, Godfrey Barnes, John Yelland and George Turner*, since they sufficient matter in law in their said cognizance to acknowledge justly the taking of the cattle aforesaid in the said place in which, &c. have above alledged, which they are ready to prove; which said matter the said *Mary Hoole* hath not denied, nor in any manner answered to it, but that averment hath wholly refused to admit, pray judgment and a return of the cattle aforesaid, together with their damages, costs and charges by them about their suit in this behalf laid out, according to the form of the statute, to be adjudged to them, &c.

Michaelmas Term in the ninth Year of King William the Third. Roll 363.

Blackett against Crissop. 1 Ld. Raym. 278.

Tempest.

Northumberland, CUTHBERT Crissop late of *Jordan* in (to wit) the county aforesaid, yeoman, otherwise called *Cuthbert Crissop* of *Jordan* in the county of *Northumberland*, yeoman, was summoned to answer to *John Blackett*, esq; late sheriff of the county aforesaid, of a plea that he render to him 40*l.* which he oweth to him and unjustly detains, &c. And whereupon the said *John* by *Stephen Hales* his attorney saith, that whereas the said *Cuthbert* on the 3d day of *September* in the 4th year of the reign of the lord the now king, and the lady *Mary* the second, late queen of *England*, &c. at *Hexham*, by his certain writing obligatory acknowledged himself to be held to the said *John*, then being sheriff of the county aforesaid, by the name of *John Blackett*, esq; sheriff of the county aforesaid, in the said 40*l.* to be paid to him the said *John*, when he should be thereunto requested: nevertheless the said *Cuthbert*, although often requested, hath not yet rendered the said 40*l.* to the said *John*, but to render the same to him hath hitherto denied, and yet doth deny, whereupon he saith that he is injured, and hath damage to the value of 10*l.* and thereupon he brings suit, &c. And he brings here into court the writing aforesaid, which testifies the debt in form aforesaid, the date whereof is the day and year aforesaid, &c.

Debt on a replevin bond.

And the said *Cuthbert* by *William Carr* his attorney comes and defends the force and injury when, &c. and prays *oyer* of the writing aforesaid, and it is read to him, &c. He also prays

Defendant craves *oyer* of the bond.

The condition.

prays *oyer* of the condition of the same writing, and it is read to him in these words: The condition of this obligation is such, that if the above bounden *Cuthbert Crispe* do appear at the next county court to be holden at *Alnewicke*, and then and there do prosecute his action with effect against *William Radcliffe* for wrongful taking and detaining of his cattle, to wit, two oxen, as is alledged, and do make return thereof, if return shall be adjudged by law, and also do save and keep harmless the said sheriff, his under-sheriff and bailiffs, for, touching and concerning the delivery of his said cattle, then this obligation to be void, or else to be in force; which being read and heard, he the said *Cuthbert* saith, that he ought not to be charged with the debt aforesaid, by virtue of the said writing, because he saith, that at the time of the making of the said writing the cattle aforesaid in the condition aforesaid above specified, upon the complaint of him the said *Cuthbert*, were replevied and delivered to him the said *Cuthbert* by the said late sheriff in his bailiwick, to wit, at *Hexham* aforesaid; and that at and upon such delivery of those cattle, as before is set forth, the writing aforesaid, with the condition aforesaid, was required and taken by the said late sheriff, by colour of his said office of sheriff, and by pretence of the statute set forth in the parliament of the lord *Edward* the first, formerly king of *England*, holden at *Westminster* in the county of *Middlesex* in the 13th year of his reign; which said condition above recited is not such as, but other than by that statute is appointed and ordained in such case to be taken and so be made, the same condition in itself containing the said clause or matter of saving and keeping harmless the said sheriff, his under-sheriff and bailiffs, for, touching and concerning the delivery of the said cattle; which said matter ought not to be contained in the said condition, by the form of that statute, by which the writing aforesaid is void and of no effect in law; and this he is ready to verify: wherefore he prays judgment if he ought to be charged with the debt aforesaid, by virtue of the said writing, &c.

Demurrer.

Joinder in demurrer.

Plea that the bond was given to the plaintiff upon a replevin made, &c. by pretext of the Stat. 13 Ed. 1.

And that it is not warranted by that statute, because it is to indemnify the sheriff, &c.

Trinity Term in the 7th Year of King William the Third. Roll 187.

Britton against Cole. 1 Ld. Raym. 305.

Gloucestershire, JOHN Britton complains of Thomas Cole (to wit) in the custody of the marshal of the *Marchalsea* of the lord the king, being before the king himself, for that he on the 20th day of *March* in the 7th year of the reign of the lord William the third, now king of *England*, &c. at *Hannam* in the parish of *Bitton* in the county aforesaid, with force and arms the cattle, that is to say, 43 sheep and two lambs of him the said John Britton of the price of fifteen pounds took and drove away, and other wrongs to him did, against the peace of the said lord the now king, to the damage of him the said John of 40*l.* and thereupon he brings suit, &c. Trespass.

And now here at this day, to wit, Friday next after three weeks of the Holy Trinity in this same term, until which day the said Thomas had leave to imparl to the bill aforesaid, and then to answer, &c. before the lord the king at *Westminster* come as well the said John by his said attorney as the said Thomas by Philip Hodges his attorney, and the said Thomas defends the force and injury when, &c. and as to the coming with force and arms, and whatsoever that is against the peace of the said lord the now king, saith that he is not guilty; and of this he puts himself upon the country, and the said John Britton likewise: and as to the residue of the trespass aforesaid above supposed to be done, he the said Thomas Cole saith, that the said John Britton ought not to have or maintain his said action thereof against him, because he saith, that before the said time when the trespass aforesaid is above supposed to be done, to wit, on the 12th day of *February* in the 6th year of the reign of the said lord the now king, a certain writ of the said lord the now king of *Levari facias*, issued out of the court of exchequer of him the said lord the king at *Westminster*, then being in the county of *Middlesex*, directed to the sheriff of *Gloucestershire*; by which said writ the said lord the king reciting, that whereas Richard Cocks, bart. then late sheriff of *Gloucestershire* aforesaid, by virtue of the writ of him the said lord the king of *Capias Usilagatum*, issuing out of the court of the said lord the king of common bench at *Westminster* against Francis Criswick of *Hannam's Court* within the parish of *Bitton* in the county aforesaid, Special justification under a *levari facias* grounded on an outlawry certified into the court of exchequer.

esq; outlawed in the county of *Somerſet* on the 12th day of *June* in the 5th year of the reign of the lord the king and of the lady *Mary* late queen of *England, &c.* at the ſuit of *Thomas Cole* the now defendant, and *Mary* his wife, of a plea of debt, to the aforeſaid late ſheriff directed, on the 28th day of *September* in the 5th year aboveſaid, took and ſeized into the hands of the ſaid lord the king and lady the queen one capital meſſuage or tenement called *Hannam's Court*, with all the barns, ſtables, out-houſes, edifices, gardens, orchards and appurtenances to the ſame belonging, one cloſe of paſture commonly called *Hill-houſe*, containing by eſtimation 14 acres; one other cloſe of paſture called the *New Encloſure*, containing by eſtimation eight acres, (and ſeveral other grounds) all and ſingular which premiſſes aforeſaid, with the appurtenances, were of the clear yearly value of 54*l.* in all their iſſues beyond reſpites, of the lands and chattels of the ſaid *Francis Creſwick* as by the tranſcript of the ſaid writ of *Capias Utlagatum*, and the return thereof, and of a certain inquiſition thereupon taken, certified into the exchequer of the lord the now king and there in the cuſtody of the ſaid lord the king remaining, more fully appears: the aforeſaid lord the king willing to be answered and ſatiſfied of the rents, iſſues and premiſſes aforeſaid, (as is right) commanded the ſaid ſheriff of *Glouceſterſhire* by the ſaid writ of *Levari facias*, that he ſhould not omit, becauſe of any liberty, but that he ſhould enter into the ſame, and ſhould cauſe to be made, collected and levied, all and ſingular the rents, iſſues and profits of the premiſſes aforeſaid, with the appurtenances, and of every parcel thereof forthcoming, from the ſaid time of taking thereof into the hands of the ſaid lord the king, until the feaſt of the annunciation of the bleſſed virgin *Mary* then next to come, (which was not thereof answered to the ſaid lord the king) for the proportion of time, and according to the rate and yearly value above-mentioned, ſo that when he ſhould have levied that money, he ſhould have the ſame before the barons of the exchequer of the ſaid lord the king at *Weſtminſter* from *Eaſter* day in one month then next to come in the court of the lord the king then there, to be paid to the uſe of him the ſaid lord the king, and that he ſhould have there then that writ: by virtue of which ſaid writ of *Levari facias*, *Nathaniel Rider*, eſq; then and yet being ſheriff of *Glouceſterſhire* aforeſaid, after the iſſuing of the ſame writ, to wit, on the 7th day of *March* in the 7th year of the reign of the ſaid lord the now king, at *Bitton* aforeſaid, made his warrant in writing under the ſeal of the office of him the ſaid ſheriff, directed to all the bailiffs, tythingmen, and

and other officers of the same county, and also to *Anthony Powell*, *John Cooke*, *John Oke* and *Joseph Powell* his bailiffs; by which the said sheriff commanded the said bailiffs and other officers aforesaid, that they should cause to be made, collected and levied, all and singular the rents, issues and profits of the premises aforesaid, in the writ aforesaid above-mentioned; with the appurtenances, and of every parcel thereof forthcoming; from the said time of taking thereof into the hands of the said lord the now king, until the feast of the annunciation of the blessed virgin *Mary* then next to come, for the proportion of time; and according to the rate and yearly value above-mentioned, so that the said *Nathaniel Rider* the said sheriff might have the same before the barons of the exchequer of the said lord the king at *Westminster* from *Easter* day in one month then next to come in the court of the said lord the king then there, to be paid to the use of him the said lord the king, according to the command of the writ aforesaid. And the said *Thomas Cole* further saith, that the said capital messuage or tenement called *Hannam's Court*, the said several closes and parcels of pasture and the rest of the premises in the writ of *Levari facias* aforesaid mentioned, at the time of the issuing out of the same writ at the several times of pronouncing the said outlawry, and of issuing out the said writ of *Capias Utlagatum* recited in the said writ of *Levari facias*, were and yet are lying and being in *Hannam* aforesaid, within the said parish of *Bitton* in the county of *Gloucester* aforesaid; and because the said 43 sheep and two lambs, after the issuing out of the said writ of *Levari facias*, and the making of the said warrant, and before the said feast of the annunciation of the blessed virgin *Mary*, to wit, at the said time when, &c. were in the said close of pasture called *Hill-house* in *Hannam* in the parish of *Bitton* aforesaid, being parcel of the premises aforesaid in the said writ of *Levari facias* before mentioned, there feeding levant and couchant, he the said *Thomas Cole* then and there requested the said *Anthony Powell*, and *John Powell* to take and drive away the said 43 sheep and two lambs, to make of the issues and profits aforesaid, according to the command of the said writ of *Levari facias* to the said sheriff directed, and the warrant aforesaid made by the sheriff; whereupon the said *Anthony Powell* and *John Powell* the sheep and lambs aforesaid at the said time when, &c. at *Hannam* in the parish of *Bitton* aforesaid took and drove away, which are the same residue of the trespasses aforesaid wherof the said *John Britton* above complains against him the said *Thomas Cole*; and this he is ready to verify: wherefore he prays judgment if the said *John Britton*

ought to have or maintain his said action thereof against him, &c.

Demurrer and
Joinder in demurrer.

*Pleas before the Lord the King at Westminster of
the Term of the Holy Trinity in the ninth Year of
the Reign of William, now King of England, &c.
Roll 45.*

Vinkestone against Ebdon. 1 Ld. Raym. 384.

Count in trover
for an anchor,
sails and 3 ca-
bles.

City of York, **BE** it remembered, that heretofore, to wit, (to wit) **B** in the term of *Easter* last past before the lord the king at *Westminster* came *Hubert Vinkestone* by *Geoffry Vibergh* his attorney, and brought here into the court of the said lord the king then there his certain bill against *James Ebdon* in custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, to wit: City of *York*, to wit, *Hubert Vinkestone* complains of *James Ebdon* in custody of the marshal of the *Marshalsea* of the lord the king, being before the king himself, for that, to wit, that whereas the said *Hubert* the last day of *August* in the 7th year of the reign of the lord *William*, now king of *England*, &c. was possessed of one anchor, and six sail cloths and 3 cable ropes, of the value of 10*l.* of lawful money of *England*, as of his own proper goods and chattels; and the said *Hubert* being so possessed thereof, afterwards, to wit, the same day and year at the city of *York* aforesaid casually lost the said goods and chattels out of his hands and possession; which said goods and chattels afterwards, to wit, the first day of *October* in the 7th year aforesaid, at the city of *York* aforesaid, came to the hands and possession of the said *James*, by finding: nevertheless the said *James* knowing the goods and chattels aforesaid to be the proper goods and chattels of him the said *Hubert*, and of right to belong and appertain to him, yet contriving craftily and subtilly to deceive and defraud him the said *Hubert* of the goods and chattels aforesaid, hath not delivered the said goods and chattels to the said *Hubert*, altho' afterwards, to wit, the same day and year last-mentioned, at the city of *York* aforesaid, he was requested by him the said *Hubert*, but afterwards, to wit, the same day and year last-mentioned,

mentioned, at the city of *York* aforesaid, converted and disposed of the goods and chattels aforesaid to his own proper use, to the damage of him the said *Hubert* of 50*l.* and thereupon he brings suit, &c.

And now here at this day, to wit, *Wednesday* next after three weeks of *Saint Michael* in this same term, until which day the said *James* had leave to imparl to the bill aforesaid, and then to answer, &c. come as well the said *Hubert Vinkestone* by his attorney aforesaid, as the aforesaid *James Ebdon* by *Henry Clarebrough* his attorney, and the said *James* defends the force and injury when, &c. and saith that he is not thereof guilty; and of this he puts himself upon the country, and the aforesaid *Hubert* likewise, &c. Therefore let a jury come before the lord the king at *Westminster*, on *Wednesday* next after eight days of the purification of the blessed virgin *Mary*; and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the parties aforesaid there, &c. at which day the jury between the parties aforesaid of the plea aforesaid was thereupon respited between them here until *Wednesday* next after fifteen days of *Easter* then next following, unless the justices of the said lord the king, assigned to take the assizes in the city aforesaid, by form of the statute, &c. on *Wednesday* the 11th day of *March*, at the *Guildhall* of the city of *York* aforesaid, shall first come. And now here at this day come as well the aforesaid *Hubert Vinkestone* as the aforesaid *James Ebdon* by their attorneys aforesaid, and the aforesaid justices before whom, &c. have sent here their record in these words, (to wit) Afterwards on the day and at the place within contained, before *John Turton*, knt. one of the barons of the exchequer of the lord the king, and *Thomas Hæstetyns*, esq; to the same *John Turton* and *Edward Nevill*, knt. one of the justices of the said lord the king of the bench, assigned to take the assizes in the county of the city of *York*, by form of the statute, &c. being associated for this turn, by virtue of the writ of the said lord the king of *Si non omnes*, &c. came as well the within named *Hubert Vinkestone* as the within written *James Ebdon* by their attorneys within contained; and the jury, whereof mention is within made, being called likewise came, who being chosen, tried and sworn to speak the truth concerning the matter within contained, say upon their oath, that the aforesaid *Hubert* within mentioned, at the time within written in the declaration within mentioned, was possessed of the goods and chattels in the declaration of him the said *Hubert* within specified, as of his own proper goods and chattels. And the said jurors upon their oath further say, that the town of *Newcastle upon Tyne*

Imparlanee.

Not guilty.

Nisi prius.

Special verdict.

Time is an antient town; and that the port of *Newcastle upon Time* is an antient port, under the care, conservation and government of the mayor and burgesses of that town; that by the custom within the same town, from time whereof the memory of man is not to the contrary, the mayor and burgesses of the said town, at their own proper costs and charges have been used and accustomed, and are obliged to repair and cleanse the port, and to render it convenient for the safe and secure navigation and remaining of the ships there; and that in consideration thereof the mayor and burgesses of the town aforesaid, for all the time aforesaid have had and received, and have been used and accustomed, and ought to have and receive, a duty or toll of five pence by the chaldron for all coals exported from the port aforesaid, or put and loaded in or upon any ship with an intention to be exported, and that the officer called the water-bailiff of the said town of *Newcastle* for the time being, or his deputy, from the time aforesaid hath distrained, and hath been used and accustomed to distrain any goods and chattels whatsoever distrainable by law of any person's whatsoever exporting or loading upon a ship to be exported, the goods and merchandizes aforesaid, and refusing to pay the duty or toll aforesaid, for non-payment of the said duty or toll. And the jurors aforesaid upon their oath further say, that the aforesaid *Hubert* before the said time within specified in the declaration within written, loaded a certain ship of him the said *Hubert*, called the *William and Thomas* of *Lyme*, with fifty chaldrons of coals of the value of 27*l.* and 10*s.* within the port of *Newcastle* aforesaid, with an intention to export those coals from the said port. And the said jurors upon their said oath further say, that the aforesaid *James*, at the said time when, &c. within mentioned in the declaration within written, and long before, was the officer of the said town and port called the water-bailiff, constituted in due manner by the mayor and burgesses aforesaid; and the same *James* finding the ship aforesaid loaded with the said coals as aforesaid ready to be exported, asked and demanded of the said *Hubert* the said duty or toll for the said coals, and the said *Hubert* absolutely refused to pay the said duty or toll, and thereupon the said *James*, for and in the name of a distress, took and yet detains the goods and chattels within mentioned in the declaration within written, being part or parcel of the tackle belonging to the said ship, for the non-payment of the said duty or toll. And the said jurors upon their said oath further say, that the goods and chattels within mentioned in the declaration within written, at the time of the taking thereof were worth 7*l.* and 10*s.* But whether

whether upon the whole matter aforesaid by the jurors aforesaid in form aforesaid found the said goods and chattels are in such case distrainable by the law of the land, or not, the jurors aforesaid are wholly ignorant, and thereupon pray the advice and consideration of the court here: and if upon the whole matter aforesaid, in form aforesaid found, it shall seem to the court here that they are not distrainable in such case, then the said jurors say upon their said oath, that the said *James* is guilty of the premises within laid to his charge, in manner and form as the aforesaid *Hubert* within thereof complains against him; and then they assess the damages of him the said *Hubert*, by the occasion within written, besides his costs and charges by him laid out about his suit in this behalf to 7*l.* 10*s.* and for those costs and charges to 40*s.* but if upon the whole matter aforesaid, by the said jury in form aforesaid found, it shall seem to the court here that the said goods and chattels are distrainable by law in such case, then the jurors aforesaid upon their said oath further say, that the aforesaid *James* is not guilty of the premises within laid to his charge, as he the said *James* within by pleading for himself hath alledged: and because the court of the said lord the king now here are not yet advised, &c.

Trin. 10 W. 3. Roll 1659.

Lawrence against Dodwell. 1 *Ld. Raym.* 734.

Gloucestershire, *Dulcibella* Lawrence, widow, who was the Count in dower.
(to wit) wife of *William Lawrence*, esq; by *Joseph Yate* her attorney, demands against *William Dodwell*, esq; *George Guinnot*, gent. *Thomas Longdon*, gent. and *Randal Ploydell*, gent. the third part of six messuages, six gardens, 210 acres of land, 142 acres of meadow, 114 acres of pasture, and of three acres of wood, with the appurtenances, in *Badgworth*, *Sherington Magna*, *Sherington Parva*, *Bentham*, *Uphatherly*, *Wythington* and *Chedworth*, as the dower of her the said *Dulcibella*, of the endowment of the aforesaid *William*, formerly her husband, &c.

And the aforesaid *William Dodwell*, *George*, *Thomas* and *Randall*, by *Edward Morse* their attorney come and say, That the aforesaid *Dulcibella* ought not to have her dower of the tenements aforesaid, with the appurtenances whereof, &c. of the endowment of the said *William Lawrence*, formerly her husband, against them, because they say, that the said *William Lawrence*, formerly her husband, &c. was seised
Plea in bar,
That the husband devised land to plaintiff, and avers the same was in lieu of dower.

seised (amongst other things) in his demesne as of fee of and in the manor of *Sherington Parva*, with the appurtenances, and of and in one messuage, two gardens, two orchards, 50 acres of land, 100 acres of meadow and 50 acres of pasture, with the appurtenances, in the parish of *Badgworth* in the county aforesaid; and being so seised thereof, on the last day of *April* in the year of our Lord 1697, at *Sherington Parva* aforesaid, made his last will and testament in writing, and by his said will willed and devised the manor and tenements aforesaid, with the appurtenances, to the said *Dulcibella*; to have and to hold to her the said *Dulcibella* during her widowhood. And afterwards the aforesaid *William Lawrence* at *Sherington Parva* aforesaid died so seised of such his estate thereof, after whose death the said *Dulcibella* entered into the manor and tenements aforesaid, with the appurtenances, and was and yet is seised thereof in her demesne as of her freehold for the term of her widowhood, by virtue of the devise aforesaid; with this, that they the said *William Dodwell, George, Thomas and Randall* will verify, that the said devise by the said *William Lawrence* to her the said *Dulcibella* of the manor and tenements aforesaid, with the appurtenances, in form aforesaid made, was in full recompence of the whole dower of the said *Dulcibella* happening, of all the tenements which were of the said *William*, formerly her husband, &c. and this they are ready to verify: wherefore they pray judgment if the aforesaid *Dulcibella* ought to have her dower of the tenements aforesaid, with the appurtenances whereof, &c. against them, &c.

Demurrer, and joinder in demurrer.

Pleas before the Lord the King at Westminster of the Term of the Holy Trinity in the twelfth Year of the Reign of William the Third, now King of England, &c. Roll 464, or 414.

Broughton against Langley. 2 Ld. Raym. 873.

Yorkshire, **B**E it remembered, that heretofore, to wit, in (to wit) the term of *Easter* last past before the lord the king at *Westminster* came *Humphrey Broughton* by *William Midgley* his attorney, and brought here into the court of the said lord the king then there his certain bill against *Abraham Langley*, gent. in custody of the marshal, &c. of a plea of trespass and ejectment; and there are pledges of prosecuting,
to

to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, to wit, *Yorkshire*, to wit, *Humfrey Broughton*, complains of *Abraham Langley* in custody of the marshal of the *Marshalsea* of the lord the king, being before the king himself, for that, to wit, that whereas one *John Ramsden* the younger on the first day of *April* in the 12th year of the reign of our lord *William* the third, now king of *England*, &c. at *Hipperholme with Brigghouse* within the parish of *Hallifax* in the county aforesaid, had demised, granted and to farm lett to the said *Humfrey* three messuages, twenty acres of land, twenty acres of meadow and twenty acres of pasture, with the appurtenances, situate, lying and being at *Hipperholme with Brigghouse* aforesaid within the parish of *Hallifax* aforesaid; to have and to hold the tenements aforesaid with the appurtenances, to the said *Humfrey* and his assigns, from the first day of *March* last past until the full end and term of five years from thence next ensuing and fully to be compleat and ended; by virtue of which said demise the said *Humfrey* entered into the tenements aforesaid, with the appurtenances, and was possessed thereof until the said *Abraham* afterwards, to wit, on the same first day of *April* in the year abovesaid, at *Hipperholme with Brigghouse* aforesaid within the parish of *Hallifax* aforesaid in the county aforesaid, with force and arms into the tenements aforesaid with the appurtenances, in and upon the possession of him the said *Humfrey* thereupon entered, and him the said *Humfrey* from his farm aforesaid, his term thereof not being ended, ejected and removed, and him the said *Humfrey* from his possession aforesaid so ejected and removed, kept out, and yet keeps out thereof, and other wrongs then and there to him did, against the peace of the said lord the now king, to the damage of him the said *Humfrey* of 40 L and thereupon he brings suit, &c. Ejectment.

And now here at this day, to wit, *Wednesday* next after the morrow of the *Holy Trinity* in this same term, until which day the said *Abraham* had leave to imparl to the said bill, and then to answer, &c. before the lord the king at *Westminster* come as well the said *Humfrey* by his attorney aforesaid, as the said *Abraham* by *Joseph Banks* his attorney; and the said *Abraham* defends the force and injury when, &c. and saith, that he is not thereof guilty; and of this he puts himself upon the country, and the aforesaid *Humfrey* likewise, &c. Therefore let a jury thereupon come before the lord the king at *Westminster* on *Wednesday* next after three weeks of the *Holy Trinity*, and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards the process is thereupon continued between the parties aforesaid of the plea

plea aforesaid, by the jury being thereupon respited between them, before the lord the king at *Westminster* until *Wednesday* next after three weeks of *Saint Michael*, unless the justices of the lord the king, assigned to take the assizes in the county aforesaid, shall first come, on *Saturday* the twentieth day of *July* at the castle of *York* in the county aforesaid, by form of the statute, &c. for want of jurors. At which day before the lord the king at *Westminster* cometh the said *Humphrey* by his attorney aforesaid. And the said justices of the lord the king before whom at the assizes, &c. have sent here their record before them had in these words, to wit, 'Afterwards on the day and at the place within contained, before *John Turton*, knt. one of the justices of the lord the king, assigned to hold pleas before the king himself, and *John Blencowe*, knt. one of the justices of the said lord the king of the bench, justices of the said lord the king, assigned to hold pleas before the king himself, come as well the within named *Humphrey* as the within written *Abraham* by their attornies within contained. And the jurors of the jury, whereof mention is within made, being called, certain of them, to wit, *Henry Woodhouse*, *Robert Gill*, *Stephen Day*, *John Wright*, *Anthony Worrell*, *George Helliwell*, *Nathaniel Dyson* and *Richard Smeaton*, come, and are sworn upon that jury: and because the rest of the jurors of the said jury did not appear, therefore others of the bystanders by the sheriff of the county aforesaid to this being chosen, at the request of the said *Humphrey*, and by the command of the justices aforesaid are newly appointed, whose names are assised in the panel within written, according to the form of the statute in such case lately made and provided: and the jurors so newly appointed, to wit, *Christopher Raper*, *William Eyre*, *William Cockbott* and *John Brown* being called likewise came, who being chosen, tried and sworn to speak the truth concerning the matter within contained, together with the other jurors aforesaid before impanelled and sworn, say upon their oath, that before the said time of the trespass and ejectment aforesaid above supposed to be done, one *Robert Ramsden*, the grandfather of the said *John Ramsden* the younger, the lessor of the plaintiff, in his life time was seised of and in the tenements in the declaration aforesaid mentioned, with the appurtenances, in his demesne as of fee; and being so seised thereof, on the sixth day of *April* in the year of our Lord one thousand six hundred and eighty-nine, made his last will and testament in writing, and by the same gave and devised the tenements aforesaid, with the appurtenances, in these *English* words following, to wit, I do hereby give, devise and bequeath unto *John Stateliff* of *Bailey*-

Special verdict.

Bailey-Hall in *Southworne*, and to *Robert Ramsden* my second son, and their heirs and assigns, all those my messuages or tenements, with the appurtenances at *Norwood-green*, and all the houses, buildings, lands, closes and grounds to the same belonging, now in the tenures or occupations of *Jeremiah Robinson* and *Robert Wilson*, or their assigns; and I do hereby express, publish and declare, that the said *John Stancliffe*, and *Robert Ramsden* my son and their heirs, and the survivor of them and his heirs, shall by force and virtue of this my last will stand and be seised of the said messuages or tenements, to all the uses, behoofs, intents and purposes herein after mentioned, that is to say, first of intent and purpose that they shall permit and suffer the said *George Ramsden* my son to have, receive and take the rents, issues and profits of the said messuages and tenements, for and during the term of his natural life, and after the decease of the said *George* my son, shall stand seised thereof to the use and behoof of the heirs of the body of the said *George* my son lawfully begotten and to be begotten; and for default of such issue, to the use and behoof of the said *John Ramsden* and *Robert Ramsden* my sons, and of their heirs and assigns for ever, equally to be divided amongst them; provided always and upon condition, that if it shall fortune the said *George* my son to marry, and to take to wife any woman during his life that shall have *bona fide* one or more hundred pounds, that then the said *John Stancliffe*, and *Robert Ramsden* my son, and the said *George*, shall have power by virtue of this my will to make a jointure to and for such wife of ten pounds a year of the same lands for every sum of one hundred pounds such woman or wife shall *bona fide* have of her own portion and right, for and during the term, of the natural life of such wife, and after to the heirs of the body of the said *George* upon such wife; any thing herein to the contrary notwithstanding: and amongst other things the said *Robert Ramsden* the grandfather, by his same last will further gave and devised other tenements, with the appurtenances, in these *English* words following, to wit, I do hereby devise and bequeath unto *Robert Ramsden* my second son, and to his heirs and assigns for ever, all those my messuages, lands, tenements and hereditaments, with all their appurtenances, lying and being at *Norwood-green* in *Hipperholme* in the said county of *York*, now in the tenure or occupation of *Richard Riddishden*, or his assigns, upon condition nevertheless, and to the intent and purpose, that be the said *R. Ramsden* my son, his heirs and assigns, shall permit and suffer *George Ramsden* my youngest son, his heirs and assigns, peaceably and quietly at all times hereafter for ever

ever to occupy, possess and enjoy one close of land called *Paradice* in *Hipperholme* aforesaid, now or commonly occupied with a messuage near thereunto called *Lane Ends*, and to take the rents, issues and profits of the same close to his the said *George's* and his heirs own use and uses for ever; or in default thereof, my will and mind is, that the said *George* my son and his heirs shall from and after any disturbance or molestation to him or them made or given by the said *Robert Ramsden* my son, his heirs or assigns, in the peaceable enjoyment of the said close called *Paradice*, enter into one messuage, tenement or farm, part of the said messuages, lands and tenements last above mentioned, and now or late in the tenure or occupation of one *Henry Waddington*, or his assigns, and to take the rents, issues and profits thereof, until such times as the said *Robert Ramsden* my son and his heirs shall forbear and give over such molestation or disturbance, and give him the said *George* my son and his heirs security that he the said *Robert* my son, or his heirs, nor any of them, shall at any time hereafter disturb or molest the said *George* my son, or his heirs, in the peaceable enjoyment of the said close called *Paradice*, as by the last will and testament aforesaid to the jurors aforesaid in evidence shewn, among other things, is more fully manifest and appeareth; and the jurors of the said jury upon their said oath further say, that the said *Robert Ramsden* had issue of his body lawfully begotten, his three sons, to wit, *John*, *Robert* and *George Ramsden*, and that the said *George*, after the death of the said *Robert Ramsden* his father, which happened in the year of our Lord 1689, entered into the tenements aforesaid, with the appurtenances, and held and enjoyed the same, and took and received the rents and profits thereof, and converted the same to his own use during his life, according to the intention of the last will aforesaid; and in his life-time, to wit, on the first day of *April* in the year of our Lord 1690, at *Hipperholme with Brigghouse* aforesaid, by a certain indenture then and there made between the said *George Ramsden*, by the name of *George Ramsden of Heath in Skircoat* within the parish of *Hallifax* in the county of *York*, yeoman, of the one part, and one *Roger Reeve* by the name of *Roger Reeve of Barnards-Inn, London*, gent. of the other part, and to the said jurors in evidence shewn, for and in consideration of five shillings of lawful money of *England* by the said *Roger Reeve* in hand paid to the said *George Ramsden*, before the sealing and delivery of the same indenture, and for divers other good causes and considerations him thereunto moving, the said *George Ramsden* bargained and sold the tenements aforesaid, with the appurtenances, (among other things) to the said

said *Roger Reeve*; To have and to hold the tenements aforesaid, with the appurtenances, to him from the day next before the day of the date of the same indenture, for and during the term of one whole year from thence next following fully to be compleat and ended; by virtue of which said bargain and sale, and also by force of the statute for transferring of uses into possession, the said *Roger Reeve* was possessed of the tenements aforesaid, with the appurtenances, as the law requireth; and being so possessed thereof, afterwards, to wit, on the second day of *April* in the year of our Lord 1690 aforesaid, at *Hipperholme with Briggboufe* aforesaid, by a certain other indenture then and there made between the said *George Ramsden*, by the name of *George Ramsden* of *Heath in Skircoate* within the parish of *Hallifax* in the county of *York*, yeoman, of the first part, and the said *Roger Reeve*, by the name of *Roger Reeve* of *Barnards-Inn, London*, gent. of the second part, and one *William Wilton*, by the name of *William Wilton* of *Blead-Syke in Hipperholme with Briggboufe* in the said county, yeoman, of the third part; and to the said jurors in evidence shewn, the said *George Ramsden*, to the intent and purpose to dock and cut off all intails and estates-tail then before created, limited or made of or upon the tenements aforesaid, with the appurtenances, and all and every remainder and remainders, reversion and reversions, and other limitations whatsoever thereupon limited, being or depending, and for settling and establishing the same to the uses in and by the same indenture expressed, mentioned, limited and declared; and for other good causes and considerations him thereunto moving, he the said *George Ramsden* released and confirmed, and by the said indenture did release and confirm to the said *Roger Reeve* the tenements aforesaid, with the appurtenances; To have and to hold those tenements, with the appurtenances, to the said *Roger Reeve* and his heirs until a common recovery might be had and perfected thereof; and then to all such uses, intents, limitations and purposes as were afterwards in the same indenture mentioned, limited and declared; and to no other use, intent or purpose whatsoever; and by the same indenture it was covenanted, granted, concluded and fully agreed by and between all the said parties to the same indenture, and the said *George Ramsden* and *Roger Reeve* did covenant, promise and grant to and with the said *William Wilton*, that they the said *George Ramsden* and *Roger Reeve*, before the end of the term of the Holy *Trinity* next following the date of the same indenture, at the proper costs and charges in the law of the said *George Ramsden*, or his assigns, would suffer, or cause to be suffered, one or more perfect recovery or recoveries of all and singular the tenements

tenements aforeſaid, with the appurtenances, by ſuch names, numbers of acres and quantities of things, as by fit counſell ſhould be adviſed, wherein the ſaid *William Wilton* ſhould be demandant againſt the ſaid *Roger Reeve*, and that the ſaid *Roger* ſhould appear *gratis*, and vouch to warranty him the ſaid *George Ramſden*, who likewiſe ſhould appear and vouch to warranty the common vouchee, who alſo ſhould appear, and after having had leave to imparl, ſhould make default, and depart in contempt of the court, by which, one or more recovery or recoveries, as hath been uſed and accuſtomed in ſuch caſes, ſhould be had and ſuffered, and that the ſaid recovery or recoveries ſo as aforeſaid to be had and ſuffered by and between the ſaid parties, or any of them, ſhould be and enure, and by that indenture it was declared to be and enure to the uſe and behoof of the ſaid *George Ramſden* his heirs and aſſigns for ever, and to no other uſe or uſes, intents or purpoſes whatſoever; as by the ſame indenture to the ſaid jurors in evidence ſhewn is more fully manifeſt and appear-eth; and that by reaſon of the premiſſes the ſaid *Roger Reeve* was ſeiſed of the tenements aforeſaid, with the appurtenances, as the law requirerh; and being ſo ſeiſed thereof, the ſaid *William Wilton* afterwards, to wit, on the ——— day of ——— in the ſecond year of the reign of the ſaid lord the now king and the lady *Mary* late queen of *England*, ſued forth out of their court of chancery at *Weſtmiſter* in the county of *Middleſex* a certain writ of them the ſaid lord the king and lady the queen of entry *Sur Diſſeiſin in le poſt*, againſt the ſaid *Roger Reeve*, of the tenements aforeſaid with the appurtenances, amongſt other things, directed to the then ſheriff of *York* aforeſaid, by the names of ſeven meſſuages, ten gardens, fifty acres of land, twenty acres of meadow, fifty acres of paſture, ſixty and ſix ſhillings rent, common of paſture for all cattle, and common of turbary with the appurtenances, in *Skircoate*, *Hiſperbolme with Briggbouſe* and *Southowrome* in the pariſh of *Halliſax*, as his right and inheritance, by which ſaid writ it was commanded to the ſaid ſheriff, that he ſhould command the ſaid *Roger* that juſtly and without delay he ſhould render to the ſaid *William Wilton* the tenement, rent and commons aforeſaid, with the appurtenances, which he then claimed to be his right and inheritance, and into which the ſaid *Roger* had then not had entry, but after the diſſeiſin which *Hugh Hunt* thereof unjuſtly and without judgment made to the ſaid *William* within thirty years then laſt paſt, as he then ſaid, and whereupon he then complained that the ſaid *Roger Reeve* then unjuſtly deſorced him thereof, and unleſs he ſhould do it, and the ſaid *William Wilton* ſhould then make

make him the sheriff secure concerning the prosecuting of his claim, then he should summon by good summoners the said *Roger Reeve*, that he should be before the justices of the said then king and queen at *Westminster* aforesaid——then next following, to shew wherefore he had not done it, and that he should then have there the summoners, and that writ: at which day before *Henry Pollexfen*, knt. and his companions, then justices of the then king and queen of the bench at *Westminster* aforesaid, came as well the said *William Wilton* as the said *Roger Reeve* in their proper persons; and the sheriff, to wit,——returned the writ aforesaid, executed in the form following, that is to say, that the said *William Wilton* had found to the same sheriff pledges of prosecuting his said writ, to wit, *John Doe* and *Richard Roe*, and that the said *Roger* was summoned by *John Den* and *Richard Fen*, and upon this the said *William Wilton*, by declaring against the said *Roger* upon the writ aforesaid, then demanded against him the tenements, rent and commons aforesaid, with the appurtenances, as his right and inheritance, and into which the said *Robert* had not entry, but after the disseisin which *Hugh Hunt* thereof unjustly and without judgment made to the said *William* within thirty years, &c. and whereupon he then said that he himself was seised, of the tenement, rent and commons aforesaid, with the appurtenances, in his demesne as of fee and right, in the time of peace in the time of the said king and queen, by taking the profits thereof to the value, &c. and into which, &c. and thereupon he then brought suit, &c. and the aforesaid *Roger* in his proper person then defended his right when, &c. and vouched thereof to warranty the aforesaid *George Ramsden*, summoned in the county aforesaid, so that the then sheriff should have him here on the morrow of the ascension of our Lord then next following, by the aid of the court, &c. The same day was given to the parties aforesaid there, &c. and thereupon the said *Roger* put in his stead *John Empson* and *Joseph Butler* his attornies, jointly and severally against the aforesaid *William*, to gain or lose of the plea aforesaid, &c. at which day here came as well the aforesaid *William Wilton* in his proper person, as the aforesaid *Roger* by the said *John Empson* his attorney, and the aforesaid *George* being summoned, &c. by *Thomas Gill* his attorney likewise came and freely warranted to him the tenements, rent and commons aforesaid, with the appurtenances, &c. and thereupon the aforesaid *William* demanded against him the said *George*, tenant by his warranty, the tenements, rent and commons aforesaid, with the appurtenances aforesaid, in form aforesaid, &c. and whereupon he then said that he himself was seised of the tenements,
rent

rent and commons aforesaid, with the appurtenances, in his demesne as of fee and of right, in time of peace in the time of the said king and queen, by taking the profits thereof to the value, &c. and into which, &c. and thereupon he then brought suit, &c. and the aforesaid *George*, tenant by his warranty, then defended his right when, &c. and further vouched thereof to warranty. *John Wheeler*, who was then likewise present in court here in his proper person, and freely warranted to him the tenements, rent and commons aforesaid, with the appurtenances, &c. and upon this the aforesaid *William* demanded against him the aforesaid *John*, tenant by his warranty, the tenements, rent and commons aforesaid, with the appurtenances, in form aforesaid, &c. And whereupon the said *William* then said that he himself was seised of the tenements, rent and commons aforesaid, with the appurtenances, in his demesne as of fee and right in time of peace in the time of the said king and queen, by taking the profits thereof to the value, &c. and into which, &c. and thereupon he then brought suit, &c. and the aforesaid *John Wheeler*, tenant by his warranty, defended his right when, &c. and then said that the aforesaid *Hugh* did not disleise the said *William* of the tenements, rent and commons aforesaid, with the appurtenances, as the said *William* by his writ and declaration aforesaid above supposed; and of this he then put himself upon the country, and the aforesaid *William* then prayed leave thereof to imparl, and he had it, &c. and afterwards the said *William* came again in the same court in that same term in his proper person, and the aforesaid *John*, although solemnly called came not again, but departed in contempt of the court, and made default; therefore it was considered that the aforesaid *William* should recover his seisin against the said *Roger* of the tenements, with the rent and commons aforesaid, with the appurtenances, and that the said *Roger* should have of the land of the said *George* to the value, &c. and that the said *George* should further have of the land of the said *John* to the value, &c. and the said *John Wheeler* should be in mercy, &c. And thereupon the said *William* prayed the writ of the said king and queen, to be directed to the sheriff of the county of *York* aforesaid, to cause full seisin to be delivered to him of the tenements, rent and commons aforesaid, with the appurtenances; and it was granted to him returnable in the same court here in eight days of the Holy *Trinity* then next following, at which day came in the same court here the aforesaid *William* in his proper person, and the sheriff, to wit, *Christopher Wandsford*, bart. then returned that he by virtue of the writ aforesaid,

aforesaid, on the ninth day of *June* then last past had caused to be delivered to the said *William* full seisin of the tenements, rent and commons aforesaid, with the appurtenances, as by that writ he was commaunded, as by the exemplification of that record to the said jurors in evidence shewn more fully appeareth; and by reason of the premisses he the said *George Ramsden* was seised of the tenements within specified, with the appurtenances, as the law requireth; and being so seised thereof, the aforesaid *Abraham Langley* lent and paid to the aforesaid *George Ramsden* the sum of 150*l.* specified in the indenture of release afterwards mentioned, and thereupon afterwards, to wit, on the first day of *November* in the ninth year of the reign of the lord the now king, by a certain indenture then made between him the said *George Ramsden*, by the name of *George Ramsden of Heath* in *Skircoate* in the county of *York*, yeoman, of the one part, and the within named *Abraham Langley*, by the name of *Abraham Langley*, of *Priestley* in *Hipperholme* in the county aforesaid, gent. of the other part, to the said jurors also in evidence shewn, for and in consideration of five shillings to the said *George Ramsden* by the said *Abraham* in hand paid, the said *George Ramsden* bargained and sold the tenements within written, with the appurtenances, to the said *Abraham*; to have and to hold from the day next before the day of the date of the same indenture, for and during and unto the full end and term of one whole year from thence next following and fully to be compleat and ended: by virtue of which said bargain and sale, and also by force of the statute aforesaid, the said *Abraham* was possessed of the tenements aforesaid with the appurtenances, as the law requireth; and being thereof so possessed, and the aforesaid *George* being seised of the reversion thereof, as the law requireth, afterwards, to wit, on the second day of *November* in the ninth year aforesaid, by a certain other indenture then made between him the said *George Ramsden* of *Heath* in *Skircoate* in the county of *York*, yeoman, of the one part, and the said *Abraham*, by the name of *Abraham Langley* of *Priestley* in *Hipperholme* in the county aforesaid, gent. of the other part, to the said jurors in evidence shewn, the said *George Ramsden* for and in consideration of the sum of 150*l.* of lawful money of *England* to the said *George Ramsden* by the said *Abraham*, before the sealing and delivery of the same indenture, well and truly in hand paid, the said *George* granted and released to the said *Abraham* the tenements within written, with the appurtenances, to the said *Abraham Langley*; to have and to hold those tenements with the appurtenances, to the said *Abraham Langley*, his heirs and

rent and commons aforesaid, with the appurtenances, in his demesne as of fee and of right, in time of peace in the time of the said king and queen, by taking the profits thereof to the value, &c. and into which, &c. and thereupon he then brought suit, &c. and the aforesaid *George*, tenant by his warranty, then defended his right when, &c. and further vouched thereof to warranty *John Wheeler*, who was then likewise present in court here in his proper person, and freely warranted to him the tenements, rent and commons aforesaid, with the appurtenances, &c. and upon this the aforesaid *William* demanded against him the aforesaid *John*, tenant by his warranty, the tenements, rent and commons aforesaid, with the appurtenances, in form aforesaid, &c. And whereupon the said *William* then said that he himself was seised of the tenements, rent and commons aforesaid, with the appurtenances, in his demesne as of fee and right in time of peace in the time of the said king and queen, by taking the profits thereof to the value, &c. and into which, &c. and thereupon he then brought suit, &c. and the aforesaid *John Wheeler*, tenant by his warranty, defended his right when, &c. and then said that the aforesaid *Hugh* did not disseise the said *William* of the tenements, rent and commons aforesaid, with the appurtenances, as the said *William* by his writ and declaration aforesaid above supposed; and of this he then put himself upon the country, and the aforesaid *William* then prayed leave thereof to imparl, and he had it, &c. and afterwards the said *William* came again in the same court in that same term in his proper person, and the aforesaid *John*, although solemnly called came not again, but departed in contempt of the court, and made default; therefore it was considered that the aforesaid *William* should recover his seisin against the said *Roger* of the tenements, with the rent and commons aforesaid, with the appurtenances, and that the said *Roger* should have of the land of the said *George* to the value, &c. and that the said *George* should further have of the land of the said *John* to the value, &c. and the said *John Wheeler* should be in mercy, &c. And thereupon the said *William* prayed the writ of the said king and queen, to be directed to the sheriff of the county of *York* aforesaid, to cause full seisin to be delivered to him of the tenements, rent and commons aforesaid, with the appurtenances; and it was granted to him returnable in the same court here in eight days of the Holy *Trinity* then next following, at which day came in the same court here the aforesaid *William* in his proper person, and the sheriff, to wit, *Christopher Wandesford*, bart. then returned that he by virtue of the writ aforesaid,

aforesaid, on the ninth day of *June* then last past had caused to be delivered to the said *William* full seisin of the tenements, rent and commons aforesaid, with the appurtenances, as by that writ he was commaunded, as by the exemplification of that record to the said jurors in evidence shewn more fully appeareth; and by reason of the premisles he the said *George Ramsden* was seised of the tenements within specified, with the appurtenances, as the law requireth; and being so seised thereof, the aforesaid *Abraham Langley* lent and paid to the aforesaid *George Ramsden* the sum of 150 *l.* specified in the indenture of release afterwards mentioned, and thereupon afterwards, to wit, on the first day of *November* in the ninth year of the reign of the lord the now king, by a certain indenture then made between him, the said *George Ramsden*, by the name of *George Ramsden of Heath* in *Skircoate* in the county of *York*, yeoman, of the one part, and the within named *Abraham Langley*, by the name of *Abraham Langley*, of *Priestley* in *Hipperholme* in the county aforesaid, gent. of the other part, to the said jurors also in evidence shewn, for and in consideration of five shillings to the said *George Ramsden* by the said *Abraham* in hand paid, the said *George Ramsden* bargained and sold the tenements within written, with the appurtenances, to the said *Abraham*; to have and to hold from the day next before the day of the date of the same indenture, for and during and unto the full end and term of one whole year from thence next following and fully to be compleat and ended: by virtue of which said bargain and sale, and also by force of the statute aforesaid, the said *Abraham* was possessed of the tenements aforesaid with the appurtenances, as the law requireth; and being thereof so possessed, and the aforesaid *George* being seised of the reversion thereof, as the law requireth, afterwards, to wit, on the second day of *November* in the ninth year aforesaid, by a certain other indenture then made between him the said *George Ramsden* of *Heath* in *Skircoate* in the county of *York*, yeoman, of the one part, and the said *Abraham*, by the name of *Abraham Langley* of *Priestley* in *Hipperholme* in the county aforesaid, gent. of the other part, to the said jurors in evidence shewn, the said *George Ramsden* for and in consideration of the sum of 150 *l.* of lawful money of *England* to the said *George Ramsden* by the said *Abraham*, before the sealing and delivery of the same indenture, well and truly in hand paid, the said *George* granted and released to the said *Abraham* the tenements within written, with the appurtenances, to the said *Abraham Langley*; to have and to hold those tenements with the appurtenances, to the said *Abraham Langley*, his heirs and assigns,

assigns, to the only use and behoof of the said *Abraham Langley*, his heirs and assigns for ever: and by reason of the premisses the said *Abraham* entered into those tenements with the appurtenances, and was seised thereof, as the law requireth; and being so seised thereof, the said *George* afterwards, to wit, the first day of *December* in the year of our Lord 1697 died; and the said jurors further say upon their oath, that the within named *John Ramsden* the younger afterwards, to wit, on the within written first day of *April* in the twelfth year of the reign of the lord the now king, demised, granted and to farm lett to the said *Humfrey* the said tenements with the appurtenances; to have and to hold those tenements, with the appurtenances, to the said *Humfrey* and his assigns, from the first day of *March* then last past until the full end and term of five years from thence next following fully to be compleat and ended, as within is supposed: by virtue of which said demise he the said *Humfrey* entered into the tenements aforesaid, with the appurtenances, and was possessed thereof, until the aforesaid *Abraham* afterwards, to wit, the same first day of *April* in the twelfth year aforesaid into the tenements aforesaid with the appurtenances, in and upon the possession of him the said *Humfrey* thereupon entered, and him the said *Humfrey* from his farm aforesaid ejected, expelled and removed, as within is alledged: but whether upon the whole matter aforesaid in form aforesaid found the said *Abraham* be guilty of the trespass and ejectment within written, or not, the jurors are wholly ignorant, and thereupon pray the advice of the court here in the premisses; and if upon the whole matter aforesaid in form aforesaid found it shall seem to the justices here that the said *Abraham* is guilty of the trespass and ejectment aforesaid, then they the said jurors say upon their oath, that the said *Abraham* is guilty of the trespass and ejectment aforesaid, as the said *Humfrey* within complains against him; and then they assess the damages of him the said *Humfrey*, by occasion of that trespass and ejectment, besides his costs and charges by him about his suit in this behalf laid out, to two pence, and for those costs and charges to forty shillings: and if upon the whole matter aforesaid in form aforesaid found it shall seem to the justices here that the said *Abraham* is not guilty of the trespass and ejectment aforesaid, then they the said jurors say upon their oath that the aforesaid *Abraham* is not guilty of the trespass and ejectment aforesaid, as the said *Abraham* within in pleading hath alledged, &c.

Pleas before the Lady the Queen at Westminster of the Term of Saint Hilary in the first Year of the Reign of Ann, now Queen of England, &c. Roll 435.

Coggs against Barnard. 2 Ld. Raym. 909.

Middlesex, **BE** it remembered, that heretofore, to wit, in (to wit) **B** the term of Saint *Michael* last past before the lady the queen at *Westminster* came *John Coggs* by *Joseph Sherwood* his attorney; and brought into the court of the said lady the queen then there his certain bill against *William Barnard*, in custody of the marshal; &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, (to wit) *John Coggs* complains of *William Barnard*, in custody of the marshal of the *Marshalsea* of the lady the queen being before the queen herself, for that, (to wit) that whereas the said *William* on the tenth day of *November* in the thirteenth year of the reign of the lord *William* the third, now king of *England*, &c. at the parish of Saint *Clement Danes* in the county of *Middlesex* aforesaid, undertook to take up safely and securely divers casks of brandy of him the said *John*, then being in a certain cellar, situate in a certain place called *Brooks-market* in the parish of Saint *Andrew Holborn* in the county aforesaid, and undertook upon himself to lay the same down safely and securely in a certain other cellar, situate in a certain other place called *Water-street* in the parish of Saint *Clement Danes* in the county aforesaid: he the said *William*, his servants and agents, afterwards to wit, the same day and year, at the parish of Saint *Clement Danes* aforesaid, so negligently and improvidently managed the said casks of brandy in laying them down in the cellar last mentioned, that for want of the good care of the said *William*, his servants and agents, one of the same casks of brandy was then and there staved, and a great quantity, to wit, 150 gallons of brandy in the said cask by that means was spilled upon the ground and lost. And also whereas the said *William* afterwards, to wit, on the same tenth day of *November* in the 13th year above said, in the parish of Saint *Clement Danes* aforesaid in the county of *Middlesex* aforesaid, undertook to take up safely and securely divers other casks of brandy of him the said *John*, being then in a certain other cellar, situate in a

Assumpsit to take up casks of brandy in one cellar and lay them down in another.

First count.

Breach.

Second count.

certain place called *Brooks-market* in the parish of Saint *Andrew Holborn* in the county aforesaid, and to put those casks there upon a cart to be carried to a certain other cellar, situate in a certain other place called *Water-street* in the parish of Saint *Clement Danes* in the county aforesaid, and the same casks, to the cellar last aforesaid, situate in *Water-street* last aforesaid, so being carried as aforesaid, there safely and securely to let down out of the cart aforesaid, and lay down in the cellar last aforesaid, he the said *William*, his servants and agents afterwards, to wit, the same day and year above-said, at the parish of Saint *Clement Danes* aforesaid, the casks of brandy last aforesaid so negligently and improvidently managed in laying them down in the cellar last mentioned, that for want of the good care of the said *William*, his servants and agents, one of the same casks of brandy last mentioned was then and there staved, and a great quantity, to wit, 150 gallons of the brandy last aforesaid, being in the same cask last mentioned, was by that means then and there spilled upon the ground and lost; whereupon the said *John* saith that he is injured, and hath damage to the value of 100*l*. And thereupon he brings suit, &c.

Breach.

Imparience.

And now at this day, to wit, *Saturday* next after eight days of Saint *Hilary* in this same term, until which day the said *William Barnard* had leave to imparl to the bill aforesaid, and then to answer, &c. before the lady the queen at *Westminster* come as well the said *John Coggs* by his attorney aforesaid, as the said *William Barnard* by *William Callier* his attorney; and the said *William Barnard* defends the force and injury when, &c. and saith that he is not guilty thereof; and of this he puts himself upon the country, and the said *John Coggs* likewise, &c. Therefore let a jury come before the lady the queen at *Westminster* on *Monday* next after the morrow of the purification of the blessed virgin *Mary*; and who neither, &c. to take cognizance, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards the process thereupon is continued between the parties, of the plea aforesaid, by the jury being respited thereupon between them, before the lady the queen at *Westminster* until *Thursday* next after eight days of the purification of the blessed virgin *Mary* from thence next following, unless the lady the queen's right trusty and well-beloved sir *John Holt*, knt. chief justice of the lady the queen, assigned to hold pleas in the court of her the said lady the queen, before the queen herself, before, on *Wednesday* next after eight days of the purification of the blessed virgin *Mary*, at *Westminster* aforesaid in the county of *Mid-*
dlesex.

Not guilty
pleaded.

Nisi prius.

Defex aforesaid, in the great hall of pleas there, by form of the statute, &c. shall come, for want of jurors, &c. At which day before the lady the queen at *Westminster* cometh the said *John Coggs* by his attorney aforesaid: and the said chief justice of the lady the queen before whom, &c. hath sent his record before him had in these words: Afterwards on the day and at the place within contained, before sir *John Holt*, kn. the chief justice within written, *John Ince*, gent. being associated to him by form of the statute, &c. come as well the within named *John Coggs* as the within named *William Barnard* by their attornies within contained: and the jurors of the jury being called likewise come, who being tried and sworn to speak the truth concerning the matters within contained, say upon their oath, that the said *William Barnard* is guilty of the premisses within laid to his charge, in manner and form as the said *John Coggs* within complains against him; and they assess the damages of him the said *John Coggs*, by reason thereof, besides his costs and charges by him laid out about his suit in this behalf, to 10*l.* and for those costs and charges to 20*s.* Therefore it is considered that the said *John Coggs* do recover against the said *William Barnard* his damages aforesaid, by the said jury in form aforesaid assessed, and also 21*l.* for his costs and charges aforesaid to the said *John Coggs*, by the court of the said lady the queen now here with his consent of increase adjudged; which said damages in the whole amount to 32*l.* and the said *William Barnard* in mercy, &c.

Postea.

Verdict for the plaintiff.

Final judgment.

Pleas at Westminster before George Treby, Knt. and his Companions, Justices of the Lord the King and Lady the Queen of the Bench, of the Term of the Holy Trinity in the sixth Year of the Reign of the Lord William and Lady Mary, by the Grace of God, of England, Scotland, France and Ireland King and Queen, Defenders of the Faith, &c. Roll 304.

Knight and his Wife against the Mayor, &c. of Wells. 1 Ld. Raym. 80.

Declaration in debt upon a bond to the plaintiff's wife while sole against the corporation of Wells.

HERETOFORE, as it appeareth in the term of Saint Hilary last past in the 1098th roll it is thus contained: *Somerſetſhire*, (to wit) the mayor, maſters and burgeſſes of the city or borough of *Wells*, otherwiſe, called the mayor, aldermen and burgeſſes of the city or borough of *Wells* in the county of *Somerſet*, in mercy, for many defaults, &c. they the ſaid mayor, maſters and burgeſſes were ſummoned to anſwer *Joſeph Knight*, eſq; and *Philippa* his wife, lately called *Philippa Gore*, of a plea that they render to them 200 l. which they owe to them and unjuſtly detain, &c. and whereupon the ſaid *Joſeph* and *Philippa*, by *Joſeph Yate* their attorney ſay, that whereas the ſaid mayor, maſters and burgeſſes, by the name of mayor, aldermen and burgeſſes of the city or borough of *Wells* in the county of *Somerſet*, on the 12th day of *July*, in the ſecond year of the reign of *James* the ſecond, late king of *England*, &c. at the city of *Wells* in the county of *Somerſet*, by their certain writing obligatory, ſealed with their common ſeal, which they the ſaid *Joſeph Knight* and *Philippa* bring here into court, the date whereof is the ſame day and year, granted themſelves to be bound to the ſaid *Philippa* while ſhe was ſole, by the name of Mrs. *Philippa Gore* of *Barrow* in the county aforeſaid, widow, in the aforeſaid 200 l. to be paid to the ſaid *Philippa*, when they ſhould be thereunto requested: nevertheleſs the aforeſaid mayor, maſters and burgeſſes of the city or borough of *Wells* aforeſaid, although often requested, have not rendered the ſaid 200 l. to the ſaid *Philippa* while ſhe was ſole, or to them the ſaid *Joſeph Knight* and *Philippa* after the eſpouſals were celebrated between them, but have denied, and yet do deny to render the ſame

same to them; whereupon they say that they are injured, and have sustained damage to the value of 40*l*. and thereupon they bring suit, &c.

And the aforesaid mayor, masters and burgessees, by *John Davis* their attorney, come and defend the force and injury when, &c. and thereupon pray leave to imparl here until from *Easter* day in fifteen days; and they have it, &c. The same day is given to the aforesaid *Joseph Knight* and *Philippa* here, &c. At which day here come as well the said *Joseph Knight* and *Philippa*, as the aforesaid mayor, masters and burgessees, by their attornies aforesaid; and the aforesaid mayor, masters and burgessees, pray further leave to imparl thereupon here until on the morrow of the Holy Trinity; and they have it, &c. The same day is given to the aforesaid *Joseph Knight* and *Philippa* here, &c. And now here at this day, that is to say, on the morrow of the Holy Trinity aforesaid come as well the aforesaid mayor, masters and burgessees, as the aforesaid *Joseph Knight* and *Philippa* by their attornies aforesaid: and hereupon they the said *Joseph Knight* and *Philippa* pray that the aforesaid mayor, masters and burgessees may answer to their said declaration; and they the said mayor, masters and burgessees, as before, defend the force and injury when, &c. and say that they ought not to be charged with the debt aforesaid, by virtue of the said writing obligatory, because they say, that that writing is not the deed of them the said mayor, masters and burgessees; and of this they put themselves upon the country, and the aforesaid *Joseph Knight* and *Philippa* likewise: therefore the sheriff is commanded that he cause to come here from the day of the Holy Trinity in three weeks twelve, &c. by whom, &c. and who neither, &c. to take cognizance, &c. because as well, &c. At which day the jury between the parties aforesaid of the plea aforesaid was thereupon respited between them here until this day, that is to say, from the day of Saint *Michael* in three weeks then next following, unless the justices of the lord the king and lady the queen, assigned to take the assizes in the county aforesaid, by form of the statute, &c. on *Wednesday* the 15th day of *August* next, past, at the city of *Wells* in the county aforesaid, should before come: and now here at this day come as well the said *Joseph Knight* and *Philippa* as the aforesaid mayor, masters and burgessees of the city or borough of *Wells* aforesaid by their attornies aforesaid. And the aforesaid justices of assize before whom, &c. have sent here their record in these words: Afterwards on the day and at the place within contained, before *John Powell*, knt. one of the justices of the lord the king and lady the queen of the bench, and *Thomas Rokeby*, another

Imparlanoe.

Plea Non est factum issue to the country.

Postea.

another justice of the said lord the king and lady the queen of the bench, justices of the said lord the king and lady the queen, assigned to take the assizes in the county of *Somerset*, by form of the statute, &c. come as well the within named *Joseph Knight*, esq; and *Philippa* his wife, lately called *Philippa Gore*, as the within written mayor, masters and burgeses of the city or borough of *Wells*, otherwise called the mayor, aldermen and burgeses of the city or borough of *Wells* in the county of *Somerset*, by their attornies within contained; and the jurors of the jury, whereof mention is within made, being called, some of them, that is to say, *Thomas Sambourn*, *James Tucker* and *Joseph Horle* came, and are sworn upon that jury: and because the rest of the jurors of the same jury did not appear, therefore others of the bystanders, by the sheriff of the county aforesaid chosen for this purpose, at the request of the said *Joseph Knight* and *Philippa* his wife, and by the command of the justices aforesaid are newly appointed, whose names are affixed in the panel within written, according to the form of the statute in such case lately made and provided; and the jurors so newly appointed, to wit, *John Webber*, *John Spireing*, *Giles Ford*, *William Bagg*, *Edward Austice*, *Hugh Brame*, *William Horler*, *John Butcher* and *John Cording* being called likewise come, who being chosen, tried and sworn to speak the truth concerning the matters within contained, together with the said other jurors before impanelled and sworn for this purpose, say upon their oath, that long before the time of making the writing obligatory within written, lady *Elizabeth*, late queen of *England*, &c. by her letters patent under her great seal of *England*, bearing date the 19th day of *July* in the 31st year of her reign, reciting, that whereas the city or borough of *Wells* in the county of *Somerset* was an ancient and populous town, therefore she the said queen willing that for the future for ever there should be had in the said city or borough continually one certain and undoubted method of, and for the keeping the peace and rule and government of the people there, and that the city or borough aforesaid for the future and for ever might be, and remain a city or borough of peace and quietness, to the dread and terror of evil persons, and for the reward of the good, and that peace and other deeds of justice there without delay should be kept; and hoping that the burgeses of that city or borough for the favour and grace of the same queen, to them in her said letters patent granted and declared, would think themselves more strongly bound to perform and fulfil their duty and services to the said queen, and her heirs and successors, of her especial grace, and of her certain knowledge and her own

Tales.

Special verdict.

Finds the character of incorporation of queen *Elizabeth*.

given more motion, willed, ordained, constituted, declared and granted, and by the same letters patent for her heirs and successors, hath willed, ordained, constituted, declared and granted, that the said society or borough of *Wells* in the said county of *Somerset* was, and should be a free city or borough of itself, and that the burgesses of that city or borough, and their successors for the future for ever, were and should be one body corporate and politic in thing, fact and name, by the name of the mayor, masters and burgesses of the city or borough of *Wells* in the county of *Somerset*, and them by the name of the mayor, masters and burgesses of the city or borough of *Wells* in the county of *Somerset*, one body corporate and politic in thing, fact and name really, and to the full, for herself the said queen, her heirs and successors, erected, made, ordained, constituted and declared by her said letters patent, and that by the same name they should have perpetual succession: and that they by the name of the mayor, masters and burgesses of the city or borough of *Wells*, were and should be in all future times for ever, able persons and capable in law to have, purchase, receive and possess lands, tenements, liberties, privileges, jurisdictions, franchises and hereditaments, of whatsoever kind, nature or species they might be, to themselves and their successors, in fee and perpetuity, also goods and chattels, and all other things whatsoever of whatsoever kind, nature or species they might be; and also to give, grant, demise and assign lands, tenements and hereditaments, and to do and execute all and every other deeds and things by the name aforesaid: and that by the same name of the mayor, masters and burgesses of the city or borough of *Wells* in the county of *Somerset* aforesaid, they might be able to plead and be impleaded, to answer and be answered, to defend and be defended in all courts and places whatsoever, and before all judges, justices, and other persons and officers whatsoever of the said late queen, and her heirs and successors, in all suits, plaints, causes, matters and demands whatsoever, of whatsoever kind, nature or species they might be, in the same manner and form as other liege persons of the said late queen of this realm of *England*, were and might be able and capable in law to plead and be impleaded, answer and be answered, defend and be defended, and to have, purchase, receive, possess, give, grant and demise: and that the said mayor, masters and burgesses of the city or borough aforesaid, and their successors, should have for ever a common seal, to be kept for all their causes and businesses whatsoever to be done of them and their successors; and that it should and might be well and lawful for the said mayor, masters and burgesses, and their suc-
 cessors,

sors, that seal, at their will and pleasure, from time to time to break, change and make of new, as should seem to them better to be done. And further the said late queen willed, and by her same letters patent for herself, her heirs and successors, ordained, that for ever then for the future there should and might be in the city or borough aforesaid one mayor, and twenty-three of the more discreet and honest burgeses of the city or borough aforesaid, who should be called the common council of the city or borough aforesaid, and should be aiding and assisting to the mayor of the said city or borough of *Wells* for the time being, in all causes and matters concerning the city or borough aforesaid. And further the said late queen willed, and by her same letters patent for herself, her heirs and successors, granted to the said mayor, masters and burgeses of the city or borough aforesaid, and their successors, that by the mayor of the city or borough aforesaid, (for the time being) and the masters and burgeses, being the common council of that city or borough, or by the major part of them, the said mayor, masters and burgeses (of whom the said late queen willed that the mayor of the said city or borough for the time being, and two masters of the city or borough aforesaid, should be three) should have the full power and faculty of instituting, constituting, ordaining and making from time to time all reasonable statutes and ordinances whatsoever for the good rule and government of the burgeses and inhabitants of the city or borough aforesaid for the time being, and for declaring in what manner and order the mayor, masters and burgeses, artificers, inhabitants and residents of that city or borough should themselves have, bear and use in their offices, mysteries, trades and businesses within the borough aforesaid, and the limits thereof for the time being, and otherwise, for the further good and public utility and government of that city or borough, and for the victualling of the same city or borough, and also for the better preservation, government, disposition, placing out and demising of the lands, tenements, possessions, revenues and hereditaments of the said mayor, masters and burgeses, and their successors, feoffees, grantees or assignees, or their future feoffees, grantees or assignees, and all other affairs and causes whatsoever touching or in any manner concerning the city or borough aforesaid, or the statutes, rights and interest of the same city or borough, which to them should seem good, wholesome, profitable, honest and necessary, according to their sound discretion, not being in any thing prejudicial to the bishop of *Bath and Wells*, and his successors for the time being, or to his liberties, nor to the dean and chapter of the cathedral church of *Wells* and their successors,

successors, or against the laws and customs of this realm of *England*: and that they and their successors, by the mayor for the time being, and the masters and burgessees, being the common council of the said city or borough, or the major part of them as aforesaid, as often as they should make such statutes and ordinances, should constitute, ordain and establish in form aforesaid such reasonable pains, punishments, penalties and imprisonment of body, or by fine and amercement, or by either of them, to and upon all delinquents against such laws, statutes and ordinances, or any of them, or any such, and which to the same mayor, masters and burgessees, the common council of the city or borough aforesaid for the time being, or to the major part of them as aforesaid, should seem to be good, necessary and requisite, and should and might be able to have and levy the same fines and amercements without the hindrance of the said late queen, her heirs and successors; all and singular which laws, statutes and ordinances so to be made as aforesaid, the said late queen willed to be observed, under the pains in the same to be contained; nevertheless so that such laws, statutes and ordinances should not be repugnant nor contrary to the laws or statutes of this realm of *England*, nor in any manner prejudicial to the bishop of *Bath and Wells* and his successors, nor to the prejudice of the said dean and chapter of the cathedral church of *Wells* aforesaid: and furthermore the same late queen willed, ordained, and for herself, her heirs and successors, granted to the aforesaid mayor, masters and burgessees, and to their successors, that for ever for the then future there should and might be in the aforesaid city or borough one mayor and seven masters in number only of the burgessees of the city or borough aforesaid, being of the common council of the same city or borough, to be chosen and appointed in the form in the same letters patent therein after specified, as by the same letters patent, among other things, more fully appears. And furthermore the said late queen willed, and by her same letters patent, of her special grace, and of her certain knowledge and mere motion, granted to the aforesaid mayor, masters and burgessees of her city or borough aforesaid, and to their successors for ever, that from thence for the future there might and should be in the city or borough aforesaid 16 others such of the better and more honest burgessees of the city or borough aforesaid, to be chosen by the same mayor, recorder and masters, or the major part of them, who together with the said mayor and seven masters of the city or borough aforesaid, should fulfil the number of twenty-four capital burgessees or counsellors of the same city or borough, and

The charter of
incorporation of
king *Charles* the
second.

and should be, and should be reputed and named the capital burghesses and counsellors of the same city or borough; which said twenty-four capital burghesses and counsellors should make and be for ever, and be called in all future times for ever, the common council of the city or borough aforesaid, for all things, matters, causes and businesses touching and concerning the borough aforesaid, and the good rule, state and government thereof; and that every one of the said twenty-four capital burghesses, not being in the office of mayor of the city or borough aforesaid, should and were to be from time to time assistants and aiding to the mayor of the same city or borough for the time being, in all causes and matters touching or concerning the same city or borough, as by the same letters patent, among other things, more fully appears. And they the said jurors further upon their oath say, That the lord *Charles* the second, last king of *England*, &c. by his letters patent under his great seal of *England*, bearing date the 10th day of *January* in the 35th year of his reign, affecting the improvement of his city or borough of *Wells* in his county of *Somerset*, and then willing that for the future for ever in the same city or borough there should be had in the said city or borough continually one certain and undoubted method for the keeping the peace, and good rule and government of the people there, that the city or borough aforesaid for the future for ever might be and remain a city or borough of peace and quietness, for the reward of the good and the terror of evil persons; and that the peace of the said late king, and other deeds of justice there, without further delay should be kept: and hoping that if the mayor, aldermen and burghesses of the city or borough of *Wells* aforesaid, and their successors, might have and enjoy more ample liberties, profits and privileges of the grant of the said late king, then they would think themselves more especially and strongly bound to weigh and perform, the services of the said late king, his heirs and successors, of his especial grace, and of his certain knowledge and mere motion, and upon the humble petition of the then mayor, masters and burghesses of the city or borough of *Wells* aforesaid, willed, constituted, declared, ordained and granted, and by his same letters patent for himself, his heirs and successors, hath willed, constituted, declared, ordained and granted that the said city or borough of *Wells* in the said county of *Somerset* was and should for the future remain a free city or borough of itself, and that the burghesses of the city or borough aforesaid, by whatsoever name, or by whatsoever names they or their predecessors before that time were in-

incorporated, they were and should be for the future for ever, by force of the same letters patent, one body corporate and politic in thing, fact and name, by the name of The mayor, aldermen and burgesſes of the city or borough of *Wells* in the county of *Somerſet*, and them and their ſucceſſors, by the name of the mayor, aldermen and burgesſes of the city or borough of *Wells* in the county of *Somerſet*, one body corporate and politic in thing, fact and name really and to the full, for himſelf the ſaid late king, his heirs and ſucceſſors, erected, made, ordained, conſtituted, declared and created by his ſame letters patent; and that by the ſame name they ſhould have perpetual ſucceſſion, and that they and their ſucceſſors, by the name of The mayor, aldermen and burgesſes of the city or borough of *Wells*, were and ſhould be in all future times for ever, able perſons and capable in law to have and purchaſe, receive and poſſeſs lands, tenements, liberties, privileges, franchiſes, jurisdictions and hereditaments to them and their ſucceſſors, in fee and perpetuity, or for term of life or lives, or in any other manner whatſoever, and alſo goods and chattels, and all other things of whatſoever kind, nature, ſpecies or quality they might be; and alſo to give, grant, demiſe and aſſign the ſame lands, tenements, hereditaments, goods and chattels, and to do and execute all other deeds and things by the name aforeſaid: and that by the name of the mayor, aldermen and burgesſes of the city or borough of *Wells* aforeſaid in the county of *Somerſet*, they might be able to plead and be impleaded, to answer and be answered, to defend and be defended in all courts and places whatſoever, and before all judges and juſtices, and other perſons and officers whatſoever of the ſaid lord the king, his heirs and ſucceſſors, in all and ſingular actions, pleas, ſuits, complaints, cauſes, matters and demands whatſoever, of whatſoever kind, nature or ſpecies they might be, in the ſame manner and form as any other liege perſons of the ſaid late king of this realm of *England*, or any other body corporate and politic within this realm of *England*, might and were able to have or purchaſe, receive, poſſeſs, give, grant and demiſe, and to plead and be impleaded, answer and be answered, defend and be defended: and that the ſaid mayor, aldermen and burgesſes of the city or borough of *Wells* aforeſaid, and their ſucceſſors, ſhould have for ever a common ſeal to be kept for all their cauſes and buſineſſes whatſoever to be done of them and their ſucceſſors; and that it ſhould and might be well lawful for the ſaid mayor, aldermen and burgesſes of the city or borough aforeſaid, and their ſucceſſors, that ſeal, at their will and pleaſure, from
time

time to time to break, change and make of new, as it should seem to them to be better to be done. And further the said late king willed, and by his same letters patent for himself, his heirs and successors, granted to the aforesaid mayor, aldermen and burgesses of the city or borough aforesaid, and their successors, that then for the future for ever there should and might be in the city or borough aforesaid one mayor, and twenty-three of the more discreet and honest burgesses of the city or borough aforesaid, who should be called the common council of the city or borough aforesaid, and should be aiding and assisting to the mayor of the said city or borough of *Wells* aforesaid for the time being, in all causes and matters concerning the city or borough aforesaid. And further the said late king willed, and by his same letters patent for himself, his heirs and successors, granted to the said mayor, aldermen and burgesses of the city or borough of *Wells* aforesaid, and their successors, that they and their successors, by the mayor of the city or borough aforesaid, (for the time being) and the aldermen and burgesses, being the common council of that city or borough or by the major part of them, the said mayor, aldermen and burgesses (of whom the said late king willed that the mayor of the same city or borough for the time being, and two aldermen of the city or borough aforesaid, should be three) should have the full power and authority of instituting, constituting, ordaining and making from time to time all reasonable statutes and ordinances whatsoever for the good rule and government of the burgesses and inhabitants of the city or borough aforesaid for the time being, and for declaring in what manner and order the said mayor, aldermen and burgesses of the city or borough aforesaid, and the artificers, inhabitants and residents of that city or borough should themselves have, bear and use in their offices, mysteries, trades and businesses within that city or borough, and the limits thereof for the time being, and further for the more further good and public utility and government of that city or borough, and for the victualling of the same city or borough, and also for the better preservation, government, disposition, placing out and demising of the lands, tenements, possessions and hereditaments of the said mayor, aldermen and burgesses, and their successors, feoffees, grantees or assignees, or their future feoffees, grantees or assignees, and all other affairs and causes whatsoever touching or in any manner concerning the city or borough aforesaid, or the statutes, rights and interest of the same city or borough, which to them should seem to be good, wholesome, profitable, honest and necessary, according to their sound discretion, not
being

being in any thing prejudicial to the bishop of *Bath and Wells* and his successors for the time being, or to his liberties, nor to the dean and chapter of the cathedral church of *Wells* or their successors, or against the laws and customs of this realm of *England*: and that they and their successors, by the mayor for the time being, and the aldermen and burgesses, being the common council of the said city or borough, or the major part of them as aforesaid, as often as they should make such laws, statutes and ordinances, should constitute, ordain and establish in form aforesaid such pains, punishments, penalties and imprisonment of body, or by fine and amercement, or by either of them, to and upon all delinquents against such laws, statutes and ordinances, or any of them, or any such, and which to the same mayor, aldermen and burgesses, being the common council of the city or borough aforesaid for the time being, or to the major part of them as aforesaid, should seem to be good, necessary and requisite, and should and might be able to have and levy the same fines and amercements without the hindrance of the said late king, his heirs and successors; all and singular which laws, statutes and ordinances so to be made as aforesaid, the said late king willed to be observed, under the pains in the same to be contained; nevertheless so that such laws, statutes and ordinances should not be repugnant nor contrary to the laws or statutes of this realm of *England*, nor in any manner prejudicial to the bishop of *Bath and Wells* and his successors, nor to the prejudice of the said dean and chapter of the cathedral church of *Wells* aforesaid: and furthermore the same late king willed, and by his same letters patent for himself, his heirs and successors, granted to the aforesaid mayor, aldermen and burgesses of the city or borough of *Wells* aforesaid, and their successors, that for ever for the then future there should and might be in the city or borough aforesaid one of the more honest and discreet men of that city or borough, chosen from time to time in the form in the same letters patent of the said late king therein after mentioned, who should be, and should be named the mayor of that city or borough, and that likewise there should and might be then for the future for ever within that city or borough seven of the more honest and discreet men of the same city or borough, chosen from time to time, according to the ordinances in the same letters patent of the same late king within specified, who should be, and should be named aldermen of that city or borough; and that likewise there should and might be for ever within the city or borough aforesaid sixteen of the more honest and discreet men of that city or borough, named from time to time, in the form in the same letters patent of the said late

Further finding
of the jury.

king therein mentioned, who should be, and should be named the capital burgesſes of the city or borough aforeſaid, as by the ſame letters patent under the great ſeal of the ſaid late king *Charles* the ſecond (among other things) more fully appears. And they the ſaid jurors further upon their oath ſay, that after the making of the letters patent laſt mentioned, ſome men being members of the old corporation firſt above mentioned by the letters patent aforeſaid laſt mentioned, were made members of the new corporation laſt mentioned; and other men who had not been members of the old corporation aforeſaid, were made members of the new corporation aforeſaid; and that one *John Day* being named a member of the new corporation aforeſaid by the ſaid letters patent laſt mentioned, afterwards and before the making of the ſaid writing obligatory was choſen and made mayor of the city or borough aforeſaid by pretext of the letters patent laſt mentioned; and that the ſaid *John Day* ſo as aforeſaid being mayor by pretext of the letters patent laſt mentioned and 13 members of the corporation aforeſaid, (the ſame 13 members being the greater number and part of the corporation aforeſaid) cauſed the ſaid common ſeal of the corporation of the city or borough of *Wells* aforeſaid in the county of *Somerſet* aforeſaid to be put to the writing obligatory within mentioned on the day and in the year within written, the ſame *John Day* not being at any time a member of the old corporation: but whether upon the whole matter aforeſaid by the jurors aforeſaid in form aforeſaid found it ſhall ſeem to the juſtices and court here that the writing obligatory within written be the deed of the mayor, maſters and burgesſes of the city or borough of *Wells* within mentioned, or not, the jurors aforeſaid are wholly ignorant, and thereupon pray the advice of the juſtices and court here, &c. and if upon the whole matter aforeſaid, by the jurors aforeſaid in form aforeſaid found, it ſhall ſeem to the juſtices and court here that the writing obligatory within written be the deed of the within named mayor, maſters and burgesſes of the city or borough of *Wells* within written, then the jurors aforeſaid ſay upon their oath, that the writing obligatory within written is the deed of them the ſaid mayor, maſters and burgesſes of the city or borough of *Wells* within mentioned, in manner and form as the within named *Joſeph Knight* and *Philippa* have thereupon within declared againſt them; and then they aſſeſs the damages of them the ſaid *Joſeph* and *Philippa*, by reaſon of the detaining of the debt within written, beſides their coſts and charges by them laid out about their ſuit in this behalf, to two pence, and for thoſe coſts and charges to forty ſhillings: And if upon the whole matter aforeſaid, by the

the jurors aforesaid in form aforesaid found, it shall seem to the justices and court here that the writing obligatory aforesaid be not the deed of the within named mayor, masters and burgeses of the city or borough of *Wells* within mentioned, then the jurors aforesaid further say upon their oath, that the said writing obligatory within written is not the deed of them the said mayor, masters and burgeses of the city or borough of *Wells* within named, in manner and form as they the said mayor, masters and burgeses of the city or borough of *Wells*, have within thereupon in pleading alledged: and because the justices here will advise themselves of and upon the premisses before they give judgment thereon, day is given to the parties aforesaid here until from the day of Saint *Michael* in three weeks, for hearing their judgment thereupon, for that they the said justices here are not yet, &c. At which day here come as well the said *Joseph* and *Philippa* as the said mayor, masters and burgeses by their attornies aforesaid: and because the justices here will further advise themselves of and upon the premisses before they give judgment thereupon, day is further given to the parties aforesaid here until in eight days of Saint *Hilary*, for hearing their judgment thereupon, for that the said justices are not, &c. (So enter the like continuances (by *Curia advisare vult*) until the term wherein judgment is given, and then enter the judgment as it shall happen to be,) which in this was for the defendants.

Trinity Term in the third Year of the Reign of King
William the Third. Roll 684.

Bellafyse and Burbridge. 1 Ld. Raym. 170.

Nottinghamshire, *RICHARD* Burbridge late of *Mansfield* Action on the
(to wit) in the county aforesaid, mercer, *Luke* Ant. 2 W. & M.
Martin late of *Newark upon Trent* in the county aforesaid, for rescuing a
innholder, *Robert Wilde* late of *Newark upon Trent* in the distress for rent
county aforesaid, cordwainer, and *Thomas Colgrave* late of
Wintborpe in the county aforesaid, labourer, were attached to
answer to Sir *Rowland Bellafyse*, knight of, the *Bath*, of a
plea of trespass upon the case, &c. And whereupon the said
Rowland by *Samuel Mottram* his attorney complains, that
whereas on the 20th day of *March* in the year of our Lord
1692, at *Holme* in the county aforesaid, he demised, granted
and to farm let to one *Edward Robinson* one messuage, two
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crofts, one close of land called *Sandhill Close*, six acres of meadow, and one other close called *Barn Close*, and six cow-gates in the upper pasture, with the appurtenances, situate, lying and being at *Holme* aforesaid, and *Northmuskam* and *Bathley* in the county aforesaid; to have and to hold the tenements aforesaid, with the appurtenances, to the said *Edward Robinson*, from the feast of the annunciation of the blessed virgin *Mary* then next following for one year then next to come, and so from year to year, so long as both parties should please; yielding and paying therefore yearly and every year wherein the said *Edward* should have and occupy the tenements aforesaid, with the appurtenances by virtue of that demise 12*l.* and 11*s.* at the feasts of Saint *Michael* the archangel, and the annunciation of the blessed virgin *Mary*, by equal portions: by virtue of which said demise the said *Edward* entered into the said demised premises with the appurtenances, and was possessed thereof; and being so possessed thereof, and the said demise being in full force, he the said *Rowland* on the 20th day of *December* in the year of our Lord 1694, in and upon the said demised premises took and seized three cows, one steer, five quarters of barley and five quarters of wheat, in the name of a distress, for 18*l.* 16*s.* 6*d.* of the rent aforesaid, for one year and an half of an year, ended at the feast of Saint *Michael* the archangel then last past, being then due and in arrear, and the grain aforesaid in the name and nature of a distress for the said rent so being due and in arrear detained in a barn, parcel of the said demised premises, as impounded, by shutting and locking the doors thereof with the same grain therein, and that grain so further to detain; and afterwards and after the appraisement of the same, according to the form of the statute of the parliament of the lord the now king and lady *Mary* late queen of *England*, in such case lately made and provided, would have sold it: nevertheless the said *Richard*, *Luke*, *Robert* and *Thomas*, contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Rowland* in this behalf afterwards, to wit, on the 26th day of *December* in the year of our Lord 1694, at *Holme* aforesaid, and within the time in which the grain aforesaid remained in the said barn under the said distress so impounded, not sold nor replevied, with force and arms rescued, took and carried away the said grain from the said barn, against the form of the statute aforesaid, to the damage of him the said *Rowland* of forty pounds; and thereupon he brings suit, &c.

The defendants pleaded not guilty.

Breedon against Gill. 1 *Ld. Raym.* 219.

England. **B**E it remembered, That on *Tuesday* on the morrow of *All Souls* in this same term before the lord the king at *Westminster* cometh here in court *Robert Breedon* in his proper person, and gives the court here to understand and be informed, That whereas by the laws and statutes of this kingdom of *England*, every issue joined in any cause depending in any court of the king within this realm, before any judge or judges, ought to be tried and determined by the testimony of *viva voce* witnesses produced in such court, and not by the reading of notes and minutes in writing, containing the testimony of any witness or witnesses taken in the same or in any other court, before the time of the trial of such issue, by any clerk of any court: and whereas a certain information lately, to wit, on the 18th day of *January* in the 7th year of the reign of the said lord the now king, according to the form of the statute in such case made and provided, was exhibited at *London* in the parish of ——— in the ward of ——— before the chief commissioners and governors of the revenues of the said lord the king of the excise appointed, according to the form of the statute in such case lately made and provided by one *Thomas Gill*, gent. who sued as well for the lord the king as for himself and the poor of the parish of *Saint Martin in the Fields* in the county of *Middlesex* against the said *Robert Breedon*, shewing that the said *Robert Breedon*, a common brewer, inhabiting and keeping a common brewhouse for brewing of beer and ale within the limits and jurisdiction of the general office of the excise, situate in *Broad-street, London*, that is to say, in the parish of *Saint Martin in the Fields* aforesaid, without first giving notice thereof at the said office of the excise, or to the commissioners or governors aforesaid, or to any of them within the limits and jurisdiction thereof, in and about the 16th day of *December* then last past did make use of and keep a private and concealed storehouse or room for laying beer and ale, or worts in casks, the same not being such as was openly known, discovered or made use of in his common usual brewhouse, to the damage and prejudice of the said lord the king in his revenue of the excise, which was contrary to the form of the statute in such case made and provided, and therefore he prayed the judgment of the said commissioners and governors by that information, as in and by the laws of the excise was devised and appointed; to which said information

before the said commissioners and governors the said *Robert Breedon* afterwards, to wit, on the third day of *March* in the 8th year of the reign of the said lord the now king there appeared and pleaded that he was not guilty of the offence in the said information contained, and issue thereupon was there joined: and in such manner it was thereupon proceeded before the said commissioners and governors of the revenue of the said lord the king of the excise, that afterwards, to wit, on the said third day of *March* in the 8th year above said, there the said commissioners and governors adjudged the said *Robert* to be guilty of the premises objected to him by the information aforesaid, from which said judgment and determination, and for having relief in the premises, the aforesaid *Robert Breedon* afterwards, to wit, on the 24th day of *April* in the 8th year of the reign of the said lord the now king, according to the form of the statute in such case lately made and provided, appealed to the commissioners of the appeals, by the laws and statutes of this realm of *England* in such case appointed; and the aforesaid *Thomas*, who sued as well for the said lord the king as for himself and the poor of the parish of *Saint Martin in the Fields* aforesaid, on the 30th day of *October* in the 8th year above said, at *Westminster* in the county of *Middlesex*, before ——— *Bodington*, ——— *Lock* and ——— *Challoner*, esquires, commissioners of the appeals aforesaid, in due manner appointed for this purpose, according to the form of the statute in such case made and provided, to prove the said *Robert* guilty of the premises in the said information specified, offered in evidence certain notes and minutes of the evidence given by *Thomas Everard*, *John Booth* and *Henry Caseburt*, then and now being in full life, and residing at the city of *London*, witnesses before the said chief commissioners and governors of the revenue, upon the trial of the said issue, before them then taken in writing by one *Edward Noell*, esq; clerk to the said chief commissioners and governors, without any lawful authority; and although he the said *Robert Breedon* then and there alledged and objected to the aforesaid commissioners of the appeals, that the said notes and minutes ought not by the laws to be read in evidence, and prayed that the said *Thomas Everard*, *John Booth* and *Henry Caseburt* being then and now in full life, as afore is set forth, might be produced to give *viva voce* evidence upon their oaths before the said commissioners of the appeals: but the said commissioners notwithstanding have adjudged that the said notes or minutes so as aforesaid by the said *Edward Noell* taken, without any lawful authority, should be read in evidence, contrary to the laws and statutes of this kingdom
of

of England; the aforesaid *Thomas Gill* the judgment so as aforesaid given by the chief commissioners and governors of the revenue of the said lord the king of the excise upon the evidence aforesaid, daily endeavours and contrives with all his power to procure to be confirmed, in contempt of the said lord the now king, and to the damage, prejudice and manifest grievance of him the said *Robert Breedon*, and contrary to the law and custom of this kingdom of England; and this he is ready to verify; whereupon he the said *Robert Breedon* prays the writ of the said lord the king of prohibition in this behalf, to be directed to the said commissioners of the appeals, to prohibit them, lest they admit the notes and minutes aforesaid in evidence in the cause aforesaid.

Hilary Term in the eighth Year of King William the Third. Roll 371.

Shalmer against Pulteney. 1 *Ld. Raym.* 276.

Cooke.

Middlesex, *GRACE Pulteney*, widow, was summoned to (to wit) answer *Richard Shalmer*, gent. of a plea that she permit him to pull down certain buildings in the parish of Saint Martin in the Fields, which *James Hulker* now deceased lately unjustly and without judgment there built in the freehold of the late *William Pulteney*, kn^t. deceased, and now of the said *Grace Pulteney*, to the nuisance of the freehold of the said *William Shalmer* in the parish of Saint Martin in the Fields aforesaid, within fifty years now last past: and whereupon the said *Richard* by *Henry Dottin* his attorney complains, that whereas on the 7th day of December in the year of our Lord 1655, the said *William Pulteney* then esquire, afterwards knight, was seised in his demesne as of fee of and in three messuages, with the appurtenances, in the parish of Saint Martin in the Fields aforesaid in the county aforesaid, and also of and in a certain yard or vacant piece of ground to the same messuages on the east part thereof next and contiguously adjoining, in which said messuages, there are and then were eleven windows or lights, being upon the east-side of the same messuages towards the said yard or vacant piece of ground, and with the same messuages then used and enjoyed, that is to say, three windows or lights in one of the said messuages, three

Quod permittat
to pull down
certain build-
ings.

The count.

three windows or lights in one other of the said messuages, and five windows or lights in the third of the said messuages, through which said windows or lights light then came in to the said three messuages, and used and ought to come in; and the said *William* being so seised of the three messuages, with the windows or lights aforesaid, and of the said yard or vacant piece of ground aforesaid, as before is set forth, on the same 7th day of *December* in the year of our Lord 1655 aforesaid, at the parish aforesaid, granted to one *John Shalmer*, the father of the said *Richard*, among other things, the said three messuages, together with all easements, profits, commodities and appurtenances whatsoever to the said messuages belonging or in any manner appertaining, or with them employed, used or enjoyed as part, parcel or members thereof, or of any part thereof; To have and to hold to the said *John Shalmer* and his heirs, to the use of the said *John* and his heirs: by virtue whereof the said *John* of the aforesaid three messuages, together with the windows or lights aforesaid, was seised in his demesne as of fee; and being so seised thereof, the aforesaid *John* afterwards, to wit, on the tenth day of *February* in the year of our Lord 1659, at the parish aforesaid died, after whose death the said three messuages, with the windows or lights aforesaid, descended to the aforesaid *Richard*, as the son and heir of the said *John*, by which he the said *Richard* afterwards, to wit, the same day and year entered into the same messuages, with the appurtenances, and of the same three messuages, with the windows or lights aforesaid, was seised in his demesne as of fee; and the said *Richard* being so seised of the three messuages aforesaid, together with the windows or lights aforesaid, the aforesaid *James Hulker*, now deceased, on the first day of *June* in the fourth year of the reign of the lord *James* the second, late king of *England*, &c. unjustly and without judgment built upon the said yard or vacant piece of ground aforesaid, then being the freehold of the aforesaid *William Pulteney* then knight, and now of the aforesaid *Grace Pulteney*, the said *James Hulker* being tenant of the same yard or vacant piece of ground for a term of years, certain buildings next to, and so near the said windows or lights that the said windows or lights were then wholly obstructed and stopped up, and are yet obstructed and stopped up, to the nuisance of the said freehold of the said *Richard*: and although the said *Richard* hath often requested the said *Grace Pulteney* that she would permit him the said *Richard* to pull down the aforesaid buildings so built to the nuisance of the freehold of him the said *Richard*, in manner aforesaid, yet the said

said *Grace Pulteney* hath not hitherto permitted him the said *Richard* to pull down the same buildings, nor yet permitteth, unjustly, to the damage of him the said *Richard* of 500*l.* and thereupon he brings suit, &c.

And the said *Grace* by *John Tisser* her attorney comes and defends the force and injury when, &c. and prays judgment of the writ aforesaid, because he saith, that where by that writ it is said that the said *Grace* should permit the said *Richard* to pull down certain buildings in the parish of Saint *Martin in the Fields*, that writ in this case is altogether uncertain, in not shewing the nature or number of the same buildings, whereupon a certain judgment may be given thereof; and also in this, that where by the said writ it is supposed that one *James Hulker* built the said buildings in the freehold of the said *William Pulteney* within fifty years now last past, there is not had any such writ formed in the book of the register; and this she is ready to verify: wherefore she prays judgment of the writ, &c.

Plea in abatement, for that the writ doth not shew the nature and number of the buildings,

And the said *Richard* saith, that he to the plea aforesaid by her the said *Grace* pleaded in abatement of the writ in manner and form aforesaid hath no necessity nor is bound by the law of the land to answer, whereupon he prays judgment, and that his said writ may be adjudged good, and that the nuisance aforesaid may be removed, &c.

Demurrer.

And the said *Grace*, for that she hath above alledged sufficient matter in law to abate the writ aforesaid, which she is ready to verify; which said matter he the said *Richard* doth not deny, nor in any manner answer thereunto, but wholly refuses to admit that averment, as before prays judgment of the said writ, &c. And because the justices here will advise themselves of and concerning the premises before they give judgment thereupon, day is given to the parties aforesaid here until on the morrow of the ascension of our Lord, to hear their judgment thereupon, for that the said justices here are not thereof yet, &c.

Joinder in demurrer.

Easter Term in the tenth Year of King William the Third.

Osborne against Poole. 1 *Ld. Raym.* 236.

Tempest.

Suggestion for a prohibition to the court of arches for words, in a libel commenced in the bishop of *Litchfield's* court, and removed to the arches.

England, **B**E it remembered, that on the 11th day of (to wit) *May* in this same term here cometh into court *Edward Osborne* by *Charles Hope* his attorney, and gives the court here to understand and be informed, that Sir *Richard Raines*, *knt.* doctor of laws, principal official of the consistory court of the bishop of *Litchfield and Coventry*, contriving to aggrieve, oppress and tire out him the said *Edward*, contrary to the due form of law of this kingdom of *England*, and to draw him to other trial in the court christian, him the said *Edward*, by colour of his office, at the promotion of *Barnabas Poole*, clerk, rector of the rectory and parish church of *Brailesford*, for a certain pretended cause of contempt, scandal and defamation of the aforesaid *Barnabas*, hath lately drawn into plea, by craftily and subtilly articling and objecting in the said court christian, before him the said official, that he the said *Edward* in the months of *March, April, May, June, July, August, September, October, November and December*, in the year of our Lord 1696, within the parish of *Brailesford* aforesaid, falsely and maliciously, to the contempt, disesteem and scandal as well of his person as of his function, reproached, vilified, publicly defamed and grievously affected him the said *Barnabas* by scandalous words, and spoke the following *English* words, or words to the like effect, to him the said *Barnabas*, (that is to say) *thou or you* (meaning and imagining the said *Barnabas*) *art or are a pitiful, pimping rascal*, with others such base words, as by a true copy of the said articles brought here into court more fully appears: and the aforesaid *Edward* gives the court here to understand, that the cause of speaking the words aforesaid of the said *Barnabas* was, because he the said *Barnabas* at the time of speaking the words aforesaid in the articles aforesaid mentioned, spoke of the said *Edward* these *English* words following, (that is to say) *that he* (meaning him the said *Edward*) *was a beggar and was going to run his country; and that if he* (meaning himself the said *Barnabas*) *could but ruin the said Edward Osborne, he* (meaning again himself

himself the said *Barnabas*) should have his end; and that he (meaning again him the said *Edward*) was used to steal his neighbour's ducks and hens, and thereby very much irritated and put him the said *Edward* into a passion; and thereupon the said *Edward* in such his passion spoke the *English* words aforesaid in the said articles mentioned, without any malice or intention to defame him the said *Barnabas* in his person or function; which said cause of speaking the said words he the said *Edward* in pleading hath alledged in the said court christian: nevertheless the said spiritual judge, then being in the said court christian, wholly refused to receive the same allegation, but hath unjustly threatened to proceed to a sentence to condemn him the said *Edward* of and upon the premisses, and to pronounce ecclesiastical censures against him: whereupon afterwards and before any sentence against him the said *Edward* was read or pronounced, or any taxation of the expences of the suit aforesaid was made or had, the aforesaid business of complaint against him the said *Edward*, at the promotion of the said *Barnabas*, of and upon the articles aforesaid, so as before is set forth, moved and prosecuted, by virtue of a certain appeal of him the said *Edward* in that behalf had and made, was duly removed and transmitted from the said court christian, before the said principal official, into another court christian, before the venerable and excellent man *George Oxenden*, doctor of laws, dean or official of the prerogative court of *Canterbury* of the arches, *London*, or other president of the same court, and in the same court of arches yet dependeth: and the same official of the said court of arches, by colour of his office, at the promotion of the said *Barnabas*, in the same court of arches prosecuting the said appeal, hath further thereupon drawn into plea and prosecuted there, and yet prosecutes him the said *Edward* of and for the offence, injury and ill behaviour aforesaid, in the articles aforesaid above specified by him the said *Edward* supposed to be done; and hath unjustly bound him the said *Edward* to answer in the said court of arches before him of and upon the articles aforesaid, upon which the said *Edward* in the same court of arches in pleading hath alledged the same matter, or cause of speaking the said words in the articles aforesaid mentioned, which he the said *Edward* in the said court christian of *Litchfield and Coventry* had alledged, as is above-mentioned: nevertheless the said official of the said court of arches then being in the same court likewise wholly refused to receive the same allegation, but daily threatens to condemn him the said *Edward* of and upon the premisses, and to pronounce ecclesiastical censures against him, in contempt

contempt of the lord the now king, and against the laws and custom of this realm of *England*, and to the great damage, prejudice, impoverishing and manifest grievance of him the said *Edward*; and this the said *Edward* is ready to verify: whereupon he the said *Edward*, most humbly imploring the aid and liberality of the court of the lord the king now here, prays remedy, and the writ of the said lord the now king of prohibition, to be directed to the said spiritual judge or official of the aforesaid court of arches, or other competent judge whatsoever in this behalf, to prohibit him that he do not further hold plea before him in any manner touching the premisses aforesaid, &c.

Trinity Term in the ninth Year of King William the Third. Roll 1945.

Studholme and his wife, executrix of Morison, against Mandall. 1 *Ld. Raym.* 279.

Debt upon a
bond made to
the testator.

Cumberland, *JOHN Mandall* late of *Boltongate* in the (to wit) *county* aforesaid, yeoman, otherwise called *John Mandall* of *Highball* in the county of *Cumberland*, miller, was summoned to answer *Richard Studholme* the younger, gent. and *Judith* his wife, executrix of the will of *Richard Morison* deceased, of a plea that he render to them one hundred pounds of lawful money of *England*, which he unjustly detains from them; and whereupon they the said *Richard* and *Judith* by *William Horsley* their attorney say, that whereas the said *John* on the 25th day of *July* in the 34th year of the reign of the lord *Charles* the second, late king of *England*, &c. at *Wigton* in the county aforesaid, by his certain writing obligatory granted himself to be bound to the said *Richard Morison* in his life-time in the said 100*l.* to be paid to the said *Richard*, when he should be thereunto requested: nevertheless the said *John*, although often requested, hath not rendered the said 100*l.* to the said *Richard* in his life-time, or to the said *Judith* after the death of him the said *Richard Morison* while she was sole, or to them the said *Richard Studholme* and *Judith* after the espousals between them celebrated, but to render the same to them, or either of them, hath denied, and yet doth deny to render the same to the said *Richard Studholme* and *Judith*, and yet unjustly detains the same, whereupon they say that they are injured, and have damage to the value of 40*l.* and thereupon they bring

bring suit, &c. And they bring here into court as well the writing aforesaid, which testifies the said debt in form aforesaid, the date whereof is the day and year abovesaid, as the letters testamentary of the said *Richard Morison*, by which it sufficiently appears to the court here that the said *Judith* is executrix of the will aforesaid, and to have the administration thereupon, &c.

And the aforesaid *John Mandall* by *John Pattison* his attorney comes and defends the force and injury when, &c. and prays *Oyer* of the writing aforesaid, and it is read to him; he also prays *Oyer* of the condition of the said writing, and it is read to him in these words, (to wit) The condition of this obligation is such, that if the above-bounden *John Mandall*, his executors, administrators and assigns, and every of them, do from time to time, and at all times hereafter, well and truly observe, perform, fulfil and keep all and singular covenants, promises, grants, articles and agreements contained, specified and declared, in one pair of indentures bearing even date with these presents, touching and concerning one milne called *Highball Milne*, made between the above-named *Richard Morison* of the one part, and the above-bounden *John Mandall* of the other part, which on the part and behalf of the said *John Mandall*, his executors, administrators and assigns, are or ought to be observed, performed, fulfilled and kept, according to the true intent and meaning of the said indentures, that then this obligation to be void, or else to remain in force with effect of law; which being read and heard, he the said *John Mandall* saith, that the said *Richard Studholme* and *Judith* his wife ought not to have their said action against him, because he saith, that the indenture aforesaid in the said condition above-mentioned was made at *Wigton* aforesaid on the said 25th day of *July* in the 34th year of the reign of the said late king *Charles* the second abovesaid, between the said *Richard Morison*, by the name of *Richard Morison* of *Cockermouth* in the county of *Cumberland*, gent. of the one part, and the aforesaid *John Mandall*, by the name of *John Mandall* of *Highball* in the county aforesaid, miller, of the other part, the counterpart whereof, sealed with the seal of him the said *Richard Morison*, he the said *John Mandall* brings here into court, bearing date the same day and year: by which said indenture the said *Richard Morison*, for and in consideration of the rent and covenants in the same indenture therein after expressed, and also for divers other reasonable considerations him thereunto moving, had demised, granted and to farm letten, and by the same indenture for himself, his executors and administrators, did demise, grant and to farm let unto

Plea in bar.

Oyer of condition for the performance of covenants in an indenture between the testator and defendant.

the

the said *John Mandall* all that his water-grist mill, commonly called or known by the name of the *Highball Mill*, with the appurtenances, situate and being in the parish of *Westward* within the county aforesaid, then in the tenure or occupation of the said *John Mandall*; and also all toll, benefit and custom for grinding of corn and grain whatsoever, and also all and singular headwares, mill-ponds, mill-pools, mill-dams, stanks, banks, ponds, streams, water, watercourses, ways, paths, passages, easements, profits, commodities, advantages, emoluments and appurtenances whatsoever to the said mill belonging or in any manner appertaining; to have and to hold the said demised premises, with the appurtenances, to the said *John Mandall*, his executors, administrators and assigns, from the second day of *February* then last past before the date of the same indenture, for and during and unto the full end and term of 13 years, from thence next following fully to be compleat and ended; yielding and paying therefore yearly during the said term the yearly rent or sum of 8*l.* 5*s.* of lawful money of *England*, at two days of payment in the year, by even and equal portions, that is to say, upon the first day of *August* and upon the second day of *February*: and the said *John Mandall* for himself, his executors, administrators and assigns, did covenant, promise and agree to and with him the said *Richard Morison*, his heirs, executors, administrators and assigns, that he the said *John Mandall*, his executors, administrators and assigns, would well and sufficiently find and provide all necessary repairs whatsoever which should happen about the said mill during the said term, (except wood for the same, which the said *Richard Morison* was to find, if the same could be got, within the liberties of *Highball* demesne or farmhold): and the said *John Mandall* did covenant and promise to leave the said mill in as good repair, with all the materials thereunto belonging, at the expiration of the said lease, as when he entered the same, to be viewed by four honest neighbours, equally to be chosen between them. And the said *John Mandall* did covenant and promise for himself, his executors and administrators, to leave the mill stones upon the said mill, at the expiration of the aforesaid term, as good as when he entered, or else to give satisfaction in money for as much as they should be worse, according to the discretion of the parties that viewed the same at the first, as by the same indenture, amongst other things, more fully appears; which are all and singular the things in the said indenture contained, on the part of him the said *John* to be observed, performed, fulfilled or kept. And the said *John* further saith, that he at the end and expiration of the term aforesaid

The covenant
on which the
main question
in the cause
arose.

Averment of
the performance
of said covenant.

aforesaid left two mill-stones in and upon the said mill, and that the parties who first viewed the mill-stones which were upon the said mill at the time of the entry of him the said *John*, into that mill have not hitherto agreed how much the said two mill-stones by him left, at the expiration of the said term, were worse than the said mill-stones in and upon the said mill at the said time of the entry of him the said *John* thereupon. And the said *John* further saith, that he hath well and truly observed, performed, fulfilled and kept all and singular other the covenants, promises, grants and agreements contained, specified and declared in the said indenture, on the part of him the said *John Mandall*, to be observed, performed, fulfilled and kept, according to the form and effect of the said indenture; and this he is ready to verify: whereupon he prays judgment if the said *Richard Studbolme* and *Judith* ought to have their said action against him, &c.

General performance as to the other covenants.

And the aforesaid *Richard Studbolme* and *Judith* his wife pray *Oyer* of the indenture aforesaid; and it is read to them in these words, (that is to say) This indenture made the 25th day of *July* in the 34th year of the reign of our sovereign lord *Charles* the second, by the grace of God, of *England, Scotland, France* and *Ireland* king, defender of the faith, &c. Annoq, Domini 1682, between *Richard Morison* of *Cockermouth* in the county of *Cumberland*, gent. of the one part, and *John Mandall* of *Highball* in the county aforesaid, miller, of the other part, witnesseth, that the said *Richard Morison*, for and in consideration of the rent and covenants herein after in these presents expressed, and also for divers other reasonable considerations him thereunto moving, hath demised, granted and unto farm letten, and by these presents doth for himself, his executors and administrators, demise, grant and to farm let unto the said *John Mandall* all that his water-grist-mill, commonly called or known by the name of *Highball Mill*, with the appurtenances, situate and being in the parish of *Westward* within the county aforesaid, now in the tenure or occupation of the said *John Mandall*, and also all toll, benefit and custom for-grinding of corn and grain whatsoever, and also all and singular headwares, mill-ponds, mill-pools, mill-dams, stanks, banks, ponds, streams, water, watercourses, ways, paths, passages, easements, profits, commodities, advantages, emoluments and appurtenances whatsoever, to the said mill belonging or in any wise appertaining; to have and to hold the said mill with the appurtenances, and all toll, benefit and custom of grinding of all corn and grain whatsoever, with all and singular headwares, mill-ponds, mill-pools, mill-dams, stanks, banks, ponds,

Replication.
Oyer of the indenture.

ponds, streams, water, watercourses, ways, paths, passages, easements, profits, commodities, advantages, emoluments, and appurtenances whatsoever herein before mentioned, unto the said *John Mandall*; his executors, administrators and assigns, from the second day of *February* last past before the date hereof, for and during and unto the full end and term of 13 years from thence next ensuing and fully to be compleat and ended; yielding and paying therefore yearly during the said term the yearly rent or sum of 8*l.* and 5*s.* lawful *English* money, at two days of payment in the year, by even and equal portions, viz. upon the first day of *August* and upon the second day of *February*. And the said *John Mandall* doth for himself, his executors and administrators, covenant, promise and grant to and with him the said *Richard Morison*, his heirs, executors, administrators and assigns, that he the said *John Mandall* shall and will well and sufficiently find and provide all necessary repairs whatsoever which shall happen to be about the said mill during the aforesaid term, except wood for the same, which the said *Richard Morison* is to find, if the same can be got, within the liberties of *Highball* demesne or farmhold. And the said *John Mandall* doth covenant and promise to have the said mill in as good repair with all the materials thereunto belonging, at the expiration of the said lease, as when he entered the same, to be viewed by four honest neighbours, equally chosen between them. And the said *John Mandall*, his executors, administrators and assigns, is to have one cow-grass in summer, and one horse-grass in winter yearly during the said term within the farmhold of the said *Highball*, the cow-grass in summer to be in wood-closes, fog-closes and new riving, or in some of them, and the horse to be wintered in all or some of the said closes. And it is further agreed upon by these presents, that he the said *John Mandall*, his executors, administrators and assigns, for and under the payment of the said yearly rent of 8*l.* and 5*s.* above by these presents reserved in manner and form aforesaid, and performing, fulfilling and keeping all and singular the covenants, grants, articles and agreements before in these presents contained, which on his and their parts are and ought to be observed, performed, fulfilled and kept, shall and may lawfully, peaceably and quietly have, hold, occupy, possess and enjoy all and singular the said demised premises, and every part and parcel thereof, with their and every of their appurtenances, without lawful let, suit, trouble, eviction, ejection, molestation or interruption whatsoever of him the said *Richard Morison*, his executors, administrators

ministrators or assigns, or any of them, during the aforesaid term. And the said *John Mandall* doth covenant and promise for himself, his executors and administrators, to leave mill-stones upon the said mill, at the expiration of the aforesaid term, as good as when he entered, or else to give satisfaction in money for as much they shall be worse, according to the discretion of the parties that viewed the same at the first. In witness whereof the parties abovesaid interchangeably have hereunto set their hands and seals the day and year first above-written. Memorandum, it is agreed unto by the said parties before the sealing hereof, that whereas the stones that was upon the said mill was then valued at three pounds, if the said *John Mandall* leaves stones upon the said mill at the end of the said lease better than the said sum, then he to have the overplus returned; which being read and heard, they the said *Richard Studbolme* and *Judith* his wife say, that they by any thing before alledged ought not to be barred from having their said action thereof against the said *John Mandall*, because they say, that at the time of the making of the said indenture, and also at the said time when he the said *John Mandall* entered upon the said mill to him demised, as before is set forth, to wit, on the 26th day of *July* in the 34th year of the reign of the said late king *Charles* the second, there were two mill-stones of the value of 3*l.* remaining and being in the same mill for the use of that mill, and that at the end and expiration of the term of years abovesaid in the indenture afore-said above-mentioned, the said *John Mandall* did not leave mill-stones in or upon the mill abovesaid as good as the said two mill-stones were at the said time of the entry of him the said *John Mandall* upon the mill abovesaid to him demised, as before is set forth, nor hath given any satisfaction in money to any person whatsoever for so much as the mill-stones by him the said *John Mandall* in the same mill left were worse than the said two mill-stones being in the same mill at the time of the said entry of him the said *John Mandall*; and this they the said *Richard Studbolme* and *Judith* his wife are ready to verify: whereupon they pray judgment and their debt abovesaid, together with their damages by reason of the detaining of that debt, to be adjudged to them, &c.

Breach assigned.

And the said *John Mandall* as before saith that he at the end and expiration of the term abovesaid left two mill-stones in and upon the said mill, and that the parties who first viewed the mill-stones which were upon the said mill at the time of the entry of him the said *John* into that mill have not hitherto agreed how much the said two mill-stones by him left at the expiration of the said term, as afore is set forth,

Rejoinder,
which is no
more than a
repetition of
the bar.

were

were worse than the said mill-stones in and upon the said mill at the said time of the entry of him the said *John* thereupon; and this he is ready to verify: whereupon as before he prays judgment, and that the said *Richard* and *Judith* may be barred from having their said action against him, &c.

Demurrer, and joinder in demurrer.

Trinity Term in the eighth Year of the Reign of King William the Third. Roll 1453.

Bates, Widow, against Bates. 1 Ld. Raym. 326.

Count in dower.

Northumberland, ANN Bates, widow who was the wife of (to wit) *Ralph Bates*, esq; by *Edward Hansley* her attorney demands against *Thomas Bates*, gent. the third part of twenty messuages, two gardens, 800 acres of land, 800 acres of meadow, 1000 acres of pasture and 1000 acres of moor, with the appurtenances in *Hertford, East Harford, Halliwell, Millburne*, and the parishes of *Woodborne Garfield* and *Point* island, as her dower of the endowment of the aforesaid *Ralph*, sometime her husband, whereof she nothing hath, &c.

Tenant by guardian pleads *ne unques seise que dower.*

And the said *Thomas* by *Robert Bewicke*, esq; who is admitted by the king's court here to prosecute for the said *Thomas* who is within age, as the guardian of him the said *Thomas*, comes and says, that the aforesaid *Ann* ought not to have her dower of the tenements aforesaid with the appurtenances of the endowment of the said *Ralph*, sometime her husband, because he says that the said *Ralph* sometime her husband, neither on the day when he married the aforesaid *Ann*, nor at any time afterwards, was seised of the tenements aforesaid, with the appurtenances, whereof, &c. of such estate, so that the said *Ann* could be endowed thereof; and of this he puts himself upon the country, and the said *Ann* likewise: therefore the sheriff is commanded, that he cause to come here in three weeks from the day of the Holy Trinity twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. at which day the jury between the parties aforesaid of the plea aforesaid is respited thereupon between them here until this day, that is to say, from the day of St. *Michael* in three weeks then next following; unless the justices of the lord king, assigned to take the assizes in the county aforesaid by form of the statute, &c. shall before come on *Saturday* the 8th day of *August* next, past,

Issue to the country.

Venue awarded.

Nisi prius.

past, at the castle of *Newcastle upon Tine* in the county aforesaid. And now here at this day come as well the said *Ann* by her attorney aforesaid, as the said *Thomas* by his guardian aforesaid: and the said justices before whom at the assizes, &c. have sent here their record in these words: Afterwards on the day and at the place within contained, before *Eduard Ward*, knt. chief baron of the exchequer of the lord the king, and *John Turton*, knt. one of the justices of the lord the king, assigned to hold pleas before the king himself, justices of him the said lord the king, assigned to take the assizes in the county of *Northumberland* by form of the statute, &c. come as well the within named *Ann Bates* by her attorney within contained, as the within written *Thomas Bates* by his guardian within written; and the jurors of the jury, whereof mention is within made, being called, some of them, that is to say, *Francis Huntridge*, *Lionel Windship*, *John Hall*, *Gerard Browel*, *John Alder*, *Roger Snawden*, *Christopher Milburne* and *Thomas Armorer* come, and are sworn upon that jury. And because the rest of the jurors of the same jury did not appear, therefore others of the by-standers, chosen by the sheriff of the county aforesaid, at the request of the said *Ann Bates*, and by command of the justices aforesaid, are newly appointed, whose names are affixed in the panel within written, according to the form of the statute in such case made and provided; which said jurors so newly appointed, that is to say, *Cuthbert Heron*, *John Wade*, *Thomas Reanly* and *George Harle* being called likewise came, who being chosen, tried and sworn to speak the truth concerning the matter within contained, together with the other jurors aforesaid before impanelled, as to 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture and 800 acres of moor, with the appurtenances, in *Hartford*, *East Harford*, *Halliwell*, and the parishes of *Woodborne* and *Garsden* within written, parcel of the tenements within specified, say upon their oath, that long before the espousals celebrated between the aforesaid *Richard Bates* and the said *Ann*, one *Ralph Bates*, esq: the father of him the said *Ralph Bates*, sometime her husband, &c. was seised of and in the aforesaid parcel of the tenements aforesaid with the appurtenances, in his demesne as of fee; and he the said *Ralph Bates* the father being so seised thereof, he the said *Ralph Bates* the father on the 23d day of *May* in the 29th year of the reign of the lord *Charles* the second, late king of *England*, &c. by a certain indenture made between him the said *Ralph Bates* the father and the within named *Ralph Bates*, the son of the said *Ralph* the father, by the names of *Ralph Bates* of *Halliwell* in the county of *Northumberland*, esq; and

The posses.

Tales.

Special verdict
as to part.That R. R. the
father of the
husband was sei-
sed in fee, &c.

Ralph Bates, the son and heir apparent of the said *Ralph Bates* of the one part, and *Robert Bewicke*, esq; and *Thomas Bewicke*, gent. by the names of *Robert Bewicke of Closehouse* in the county of *Northumberland*, esq; and *Thomas Bewicke* of the town and county of *Newcastle upon Tyne*, gent. of the other part, sealed with the seals of the aforesaid *Ralph Bates* the father, and *Ralph Bates* the son, to the jury aforesaid in evidence shewn, the date wherof is the day and year last aforesaid, for and in consideration of five shillings of lawful money of *England* to the said *Ralph Bates* the father and *Ralph Bates* the son by the said *Robert Bewicke* and *Thomas Bewicke* paid, bargained and sold to the said *Robert Bewicke* and *Thomas Bewicke* and their assigns, the aforesaid parcel of the tenements aforesaid, with the appurtenances, amongst other things; and the said *Ralph Bates* the son, by the same indenture confirmed the aforesaid bargain and sale; to have and to hold the aforesaid parcel of the tenements aforesaid, with the appurtenances, to the said *Robert Bewicke* and *Thomas Bewicke* and their assigns, from the day next before the date of the indenture aforesaid, for and during the term of one year then next following; by virtue of which said bargain and sale, and by force of the statute in the parliament of the lord *Henry* the eighth, late king of *England*, holden in the 27th year of his reign, made and provided for transferring of uses into possession, the aforesaid *Robert Bewicke* and *Thomas Bewicke* were possessed of the said parcel of the tenements aforesaid, with the appurtenances; and being so possessed thereof, and the said *Ralph Bates* the father being seised in his demesne as of fee of the reversion thereof, he the said *Ralph Bates* the father afterwards to wit, on the 24th day of *May* in the 29th year of the reign of the said late king *Charles* the second aforesaid, by a certain other indenture made between them the said *Ralph Bates* the father and *Ralph Bates* the son of the one part, and the aforesaid *Robert Bewicke* and *Thomas Bewicke* of the other part, and sealed with the seals of the said *Ralph* and *Ralph* to the jurors in evidence shewn, the date whereof is the day and year last aforesaid, for the considerations in the same indenture mentioned, granted and released to the said *Robert Bewicke* and *Thomas Bewicke* and their heirs, the aforesaid parcel of the tenements aforesaid, with the appurtenances, amongst other things, and the reversion thereof; and the said *Ralph Bates* the son confirmed the said grant and release; to have and to hold to the aforesaid *Robert Bewicke* and *Thomas Bewicke* and their heirs, to the uses, intentions and purposes, and under the provisos and limitations in the same indenture last aforesaid of and concerning the said parcel of the tenements aforesaid, with the appurtenances, limited,

mitted, declared and expressed, the tenor of which said indenture follows in these words: This indenture made the 24th day of *May* in the 29th year of the reign of our sovereign lord *Charles* the second, by the grace of God, of *England, Scotland, France* and *Ireland* king, defender of the faith, &c. between *Ralph Bates* of *Halliwell* in the county of *Northumberland*, esq; and *Ralph Bates*, son and heir apparent of the said *Ralph Bates*, of the one part, and *Robert Bewicke* of *Clofhouse* in the county of *Northumberland*, esq; and *Thomas Bewicke* of the town and county of *Newcastle upon Tyne*, gent. of the other part, witnesseth, that the said *Ralph Bates* the father and *Ralph Bates* the son, for and in consideration of the sum of five shillings of good and lawful money of *England*, to them in hand paid by the said *Robert Bewicke* and *Thomas Bewicke* before the sealing and delivery hereof, the receipt whereof they do hereby acknowledge, and for and in consideration of a marriage, by God's permission, to be shortly had and solemnized by and between the said *Ralph Bates* the son and *Margaret Bewicke*, daughter of *Thomas Bewicke* of *Clofhouse* aforesaid, esq; and in consideration of a marriage portion to be paid by the said *Thomas Bewicke* the father, and for providing a competent jointure and maintenance for the said *Margaret*, in case she should survive the said *Ralph Bates* her intended husband, and for settling the lands, tenements and hereditaments hereafter mentioned, have given, granted, bargained and sold, released and confirmed, and by these presents do for them and their heirs give, grant, bargain and sell, release and confirm unto the said *Robert Bewicke* and *Thomas Bewicke*, their heirs and assigns, all and every the manors, lordships, demesnes, towns, townships, capital messuages, farmholds, lands, tenements and hereditaments of *Halliwell, Milburne* and *East Hertford*, with their and every of their rights, members and appurtenances, situate, lying and being in the said county of *Northumberland*, together with all messuages, houses, edifices, buildings, barns, byars, stables, gardens, orchards, mills, waters, watercourses, lands, meadows, pastures, commons, common of pasture, moors, wastes, warrens, rents, services, royalties, privileges, emoluments, profits, commodities, advantages and appurtenances whatsoever to the manors, lordships, demesnes, towns, townships, capital messuages, farmholds, lands, tenements, hereditaments and premises, or any of them, or any part or parcel thereof belonging or in any wise appertaining, or now or at any time heretofore commonly used, occupied or enjoyed, reputed, taken or known as part, parcel or member thereof, or any part or parcel

thereof, and also all other the messuages, lands, tenements and hereditaments whatsoever of them the said *Ralph Bates* the father and *Ralph Bates* the son, or either of them, lying or being within the said county of *Northumberland*, and the reversion and reversions, remainder and remainders of all and singular the said premisses; to have and to hold all and every the said manors, lordships, demesnes, towns, townships, and capital messuages, farmholds, lands, tenements, hereditaments and premisses, and every part and parcel thereof, with their and every of their appurtenances to the said *Robert Bewicke* and *Thomas Bewicke* and their heirs, to the uses, intents and purposes, and under the provisos and limitations hereafter mentioned, (that is to say) as for and concerning the manor, lordship, town, township, farmholds, lands, tenements and hereditaments of *Milburne* aforesaid, to the use and behoof of the said *Ralph Bates* the son, for and during the term of his natural life, without impeaching of or for any manner of waste; and from and after the death of the said *Ralph Bates* the son, then to the use and behoof of the said *Margaret Bewicke* his intended wife, for and in lieu of her jointure, and in full satisfaction of all her right and title of dower to all and every the lands and tenements whereof the said *Ralph Bates* shall be seised during the coverture between them, and after the death of the said *Margaret Bewicke*, to the use and behoof of the first son of the body of the said *Ralph Bates* the son upon the body of the said *Margaret Bewicke* his intended wife lawfully to be begotten, and to the heirs males of the body of such first son lawfully to be begotten; and in default of such issue, then to the use and behoof of the second son of the body of the said *Ralph Bates*, upon the body of the said *Margaret* lawfully to be begotten, and to the heirs males of the body of such second son lawfully to be begotten; and in default of such issue, then to the use and behoof of the third son of the body of the said *Ralph Bates* upon the body of the said *Margaret Bewicke* lawfully to be begotten, and to the heirs males of such third son lawfully to be begotten; and in default of such issue, then to the use and behoof of the fourth son of the body of the said *Ralph Bates* upon the body of the said *Margaret* lawfully to be begotten, and to the heirs males of the body of such fourth son lawfully to be begotten; and in default of such issue, then to the use and behoof of the fifth son of the body of the said *Ralph Bates* upon the body of the said *Margaret* lawfully to be begotten, and to the heirs males of the body of such fifth son lawfully to be begotten; and in default of such issue, then to the use and behoof of the sixth son of the body of the said *Ralph Bates* upon the body of

of the said *Margaret* lawfully to be begotten, and to the heirs males of the body of such sixth son lawfully to be begotten; and in default of such issue, then to the use and behoof of the seventh, eighth, ninth, tenth, eleventh and twelfth son, and all and every the other son and sons of the body of the said *Ralph Bates* the son upon the body of the said *Margaret* lawfully to be begotten, severally and respectively, and to the heirs males of the body of every such seventh, eighth, ninth, tenth, eleventh and twelfth and every other son or sons of the body of the said *Ralph Bates* upon the body of the said *Margaret* lawfully to be begotten, severally and respectively, the elder and the heirs males of his body always to be preferred before the younger and the heirs males of his body, according to their several priority of birth and seniority of age respectively; and in default of such issue, then to the use and behoof of the heirs males of the body of the said *Ralph Bates* the son; and in default of such issue, then to the use and behoof of the said *Ralph Bates* the father and the heirs males of his body lawfully begotten or to be begotten; and in default of such issue, then to the use and behoof of the right heirs of the said *Ralph Bates* the son for ever; and as for and concerning the manors, lordships, town, townships, lands, tenements and hereditaments of *Halliwell* and *East Hartford* aforesaid, to the use, intent and purpose that it shall and may be lawful to and for the said *Ralph Bates* the father and *Margaret* his wife during their two natural lives, and the life of the longer liver of them, to have, take, perceive and receive out of the same the yearly sum or rent of one hundred and twenty pounds of lawful money of *England*, at four days or times in the year, that is to say, the feast of Saint *Philip and Jacob*, commonly called *May-day*; the first day of *August*, commonly called *Lammas-day*; the feast of Saint *Martin* the bishop in winter, commonly called *Martinmas-day*, and the second day of *February*, commonly called *Candlemas-day*, by even and equal portions; the first payment thereof to begin at or upon the feast of Saint *Philip and Jacob*, commonly called *May-day* next ensuing the date hereof; and if it shall happen that the said yearly rent or sum of one hundred and twenty pounds, or any part or parcel thereof, shall be behind in arrear or unpaid by the space of twenty days next after any of the said feasts or times whereon the same ought to be paid as aforesaid, that then it shall and may be lawful to and for the said *Ralph Bates* the father and *Margaret* his wife, and the longer liver of them, into the said manors, lordships, towns, townships, lands, tenements and hereditaments of *Halliwell* and *East Hartford*, and every or any part or parcel of

of them, or either of them, to enter and distrain, and the distress and distresses there found to take, lead, drive and carry away, and the same to hold, detain and impound, until the said rent and arrearages thereof shall be fully paid and satisfied; and to the further use, intent and purpose, that it shall and may be lawful to and for *Mark Bates* second son of the said *Ralph Bates* the father, during his natural life, to have, hold, perceive and receive out of the said manors, lordships, towns, townships, lands, tenements and hereditaments of *East Hartford*, the yearly rent or sum of thirty pounds of lawful money of *England*, at two days and times in the year, (that is to say) the first day of *August*, commonly called *Lammas-day*, the second day of *February*, commonly called *Candlemas-day*, by even and equal portions; the first payment thereof to begin at or upon the first day of *August* next ensuing the date hereof; and if it shall happen that the said yearly rent or sum of thirty pounds, or any part or parcel thereof, shall be behind in arrear or unpaid by the space of twenty days next after any of the said feasts or times whereon the same ought to be paid as aforesaid, that then it shall and may be lawful to and for the said *Mark Bates* into the said manors, lordships, towns, townships, lands, tenements and hereditaments of *East Hartford*, and every or any part or parcel thereof to enter and distrain, and the distress or distresses there found to take, lead, drive and carry away, and the same to hold, detain and impound, until the said rent of thirty pounds, and the arrearages thereof, be fully paid and satisfied. And further as for and concerning the said manor, lordship, town, township, lands, tenements and hereditaments of *Halliwell* and *East Hartford* so charged as aforesaid, the same shall go and be to the use and behoof of the said *Ralph Bates* the son, for and during his natural life, without impeachment of or for any manner of waste; and after his decease, to the use and behoof of the said *Robert Bewicke* and *Thomas Bewicke* parties to these presents their executors and administrators for and during the time and times of ninety and nine years from thenceforth next ensuing fully to be compleat, ended and run: nevertheless upon the trust, and subject to the intents and purposes hereafter in or by these presents mentioned and declared; and from and after the expiration or other determination of the said term of ninety and nine years, then to the use and behoof of the heirs males of the body of the said *Ralph Bates* the son lawfully begotten and to be begotten; and in default of such issue, then to the use and behoof of the said *Ralph Bates* the father lawfully begotten; and in default thereof, to the use of the right heirs of the said *Ralph Bates* the son for ever. And it is
by

by these presents provided and declared, that the said term for ninety and nine years unto the said *Robert Bewicke* and *Thomas Bewicke* shall, and hereby is declared to be upon this trust and confidence, and to the intent and purpose, that in case the said *Ralph Bates* the son should die without issue male of his body lawfully begotten upon the body of the said *Margaret Bewicke* his intended wife, leaving one or more daughter or daughters between him and the said *Margaret*; or in case the said issue male of the said *Ralph* and *Margaret* shall fail in the life-time of such daughter or daughters, that then the said *Robert Bewicke* and *Thomas Bewicke* their executors, administrators or assigns, or some of them, shall levy and raise out of the clear rents, issues and profits of the said manors, lordships, towns, townships, lands, tenements and hereditaments of *Halliwell* and *East Hartford* aforesaid, the full and just sum of fifteen hundred pounds of good and lawful money of *England*, to be paid unto such daughter or daughters, and if more than one, to be equally divided amongst them: and also shall levy, raise and provide out of the said clear rents, issues and profits thereof, convenient and sufficient maintenance for such daughter or daughters according to their degree and quality, until the whole sum of fifteen hundred pounds shall be fully raised and levied: and if any of the said daughter or daughters shall die before she attain the full age of one and twenty years, or be married, that then the part or portion of each daughter so dying shall fall and be paid to the surviving daughter or daughters; and after the said sum of fifteen hundred pounds so raised and paid as aforesaid then the said term of ninety-nine years shall cease and determine: and the said *Ralph Bates* the father and *Ralph Bates* the son do for themselves, their heirs, executors and administrators and every of them, covenant, grant and agree to and with the said *Robert Bewicke* and *Thomas Bewicke*, their executors, administrators and assigns, and every of them, that all and every the said manors, lordships, towns, townships, lands, tenements and hereditaments above mentioned, shall remain, continue and be to the uses, intents and purposes above mentioned, and that the said manor, lordship, town, township, lands, tenements and hereditaments of *Milburne* limited in jointure to the said *Margaret Bewicke* intended wife of the said *Ralph Bates* the son as aforesaid, and every part and parcel thereof, shall remain, continue and be clear and free of or from all titles, charges and incumbrances whatsoever during the natural life of the said *Margaret Bewicke*; and the said *Ralph Bates* the father and *Ralph Bates* the son do for themselves, their heirs, executors, administrators and assigns severally covenant, grant and

and agree to and with the said *Robert Bewicke* and *Thomas Bewicke*, their executors, administrators and assigns, that the said *Ralph Bates* the father and *Ralph Bates* the son, or the one of them, now are or is at the time of sealing and delivery of these presents lawfully and rightfully seised in their, or the one of their demesne as of fee, of and in the said manors, lordships, towns, townships, lands, tenements, hereditaments and premisses, of and in a good and absolute estate in the law of fee-simple, and that they the said *Ralph Bates* the father and *Ralph Bates* the son, or the one of them, now have or hath good power and authority in the law to grant the premisses above mentioned to the uses, intents and purposes aforesaid, and that the same are or shall be freed or otherwise well and sufficiently saved harmless and indemnified of and from all and all manner of incumbrances whatsoever committed, done or suffered by the said *Ralph Bates* the father or *Ralph Bates* the son, or either of them; and that they the said *Ralph Bates* the father and *Margaret* his wife, and *Ralph Bates* the son, and every other person or persons lawfully claiming or to claim by, from or under them, or either or any of them, shall and will from time to time, and at all times hereafter within the space of seven years next ensuing, upon the reasonable request of the said *Robert Bewicke* and *Thomas Bewicke* their executors, administrators or assigns, and at the proper costs and charges of the said *Ralph Bates* the father and *Ralph Bates* the son, make, do, acknowledge, levy, suffer, perfect, finish, and execute, or cause to be made, done, acknowledged, levied, suffered, perfected, finished and executed all and every such further and other lawful and reasonable act and acts, thing and things, conveyance and conveyances, assurance and assurances in the law whatsoever for the further, better and more perfect granting, conveying, assuring and securing of the said manors, lordships, towns, townships, lands, tenements, hereditaments and premisses, and every part and parcel thereof, to the uses, intents and purposes aforesaid, be it by deed or deeds, fine or fines with proclamations or without, recovery or recoveries with single or double voucher or vouchers, or by all or any of the said ways or means, or by any other ways or means whatsoever, as by the said *Robert Bewicke* and *Thomas Bewicke*, their heirs or assigns, or any of them, or their or any of their council learned in the law, shall or may be reasonably devised, advised or required. In witness whereof the said parties to these present indentures interchangeably have set their hands and seals the day and year first above-written: and the said jurors further say upon their oath, that the aforesaid manors, tenements and hereditaments of *Halliwell* and

East

East Hartford in the said indenture last mentioned specified, lie and be in *Hartford, East Hartford, Halliwell*, and the parishes of *Woodborne* and *Garsdon* within mentioned, and are the aforesaid parcel of the tenements aforesaid with the appurtenances within specified, and that after the making of the indentures aforesaid, to wit, on the 29th day of *June* in the 29th year aforesaid, the espousals were celebrated between the aforesaid *Ralph Bates* the son and the said *Margaret Bewicke*, and that the said *Ralph Bates* the son by virtue of the grant aforesaid, and by force of the statute aforesaid, was seised of the said parcel of the tenements aforesaid with the appurtenances as the law requireth; and they the said *Ralph Bates* the son and *Margaret* after the espousals were celebrated between them, as before is set forth, had issue of their bodies lawfully begotten the aforesaid *Thomas Bates*, the now tenant, their first begotten son, and one *R. Bates* their second son, and they had no other issue of their bodies begotten; and afterwards the said *Margaret*, who was married to the said *Ralph Bates* the son as aforesaid, and the said *R. Bates*, and the said *Ralph Bates* the father and *Margaret* his wife died, and the said *Ralph Bates* the son survived the said *Margaret* his wife, and the said *Ralph Bates* the father and *Margaret* his wife; and the said *Ralph Bates* the son being seised of the aforesaid parcel of the tenements aforesaid with the appurtenances, as before is set forth, afterward married to his wife the aforesaid *Ann*, the now demandant: and moreover the said jurors say upon their oath aforesaid, that the said *Ralph Bates*, sometime her husband, on the day when he espoused the aforesaid *Ann* and afterwards was seised of the aforesaid parcel of the tenements aforesaid with the appurtenances, by virtue of the indenture aforesaid and by force of the said statute for transferring of uses into possession as the law requireth, according to the form and effect of the indenture aforesaid; and being so seised thereof, afterwards died seised of such his estate thereof: and as to the residue of the tenements within written with the appurtenances, they the said jurors upon their oath aforesaid say that the within named *Ralph Bates* sometime the husband, &c. neither upon the day when he married the aforesaid *Ann*, nor at any time afterwards, was seised of the said residue of the tenements aforesaid with the appurtenances, of such his estate so that the said *Ann* the now demandant could be endowed thereof, as the aforesaid *Thomas Bates* within in pleading thereof hath alledged: but whether upon the whole matter aforesaid by the jurors aforesaid above found, the said *Ralph Bates* sometime the husband, &c. on the day when he married the aforesaid *Ann* the now demandant, or at any time afterwards,

was

was seised of the said 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture and 800 acres of moor, with the appurtenances, in *Hartford, East Hartford, Halliwell*, and the parishes of *Woodborne and Garston* aforesaid, whereof, &c. of such his estate so that the said *Ann* could be endowed thereof or not, they the said jurors are wholly ignorant, and thereupon pray the advice of the court here; and if upon the whole matter aforesaid in form aforesaid found it shall seem to the court here that the said *Ralph* sometime the husband, &c. on the day when he married the said *Ann* the now demandant, and afterwards, was seised of the said 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture and 800 acres of moor with the appurtenances, whereof, &c. of such his estate so that the said *Ann* could be endowed thereof, then the jurors aforesaid say upon their said oath, that the said *Ralph* sometime the husband of the said *Ann* the now demandant, on the day when he married the said *Ann*, and afterwards, was seised of the said 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture, and 800 acres of moor with the appurtenances, whereof, &c. of such his estate so that the said *Ann* could be endowed thereof; and that the said *Ralph* sometime the husband, &c. of the said 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture, and 800 acres of moor, whereof, &c. of such his estate being seised, on the 27th day of *July* in the 3th year of the reign of the lord the now king died so seised thereof, and that the said 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture and 800 acres of moor with the appurtenances, whereof, &c. are worth 270*l.* by the year in all issues beyond reprises; and they assesse the damages of her the said *Ann* the now demandant, by reason of the detaining her dower thereof beyond the value aforesaid, and besides her costs and charges by her laid out about her suit in this behalf, to two pence, and for those costs and charges to 40*s.* And if upon the whole matter aforesaid in form aforesaid found it shall seem to the court here that the said *Ralph*, sometime the husband, &c. neither on the day when he married the said *Ann* the now demandant, nor at any time afterwards, was seised of the said 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture and 800 acres of moor with the appurtenances, whereof, &c. of such his estate so that the said *Ann* could be endowed thereof, then they the said jurors say upon their said oath, that the said *Ralph*, sometime the husband, &c. neither on the day when he married the said *Ann* the now demandant, nor at
any

any time afterwards, was seized of the said 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture and 800 acres of moor with the appurtenances, whereof, &c. of such his estate so that the said *Ann* could be endowed thereof: and because the justices here will advise themselves of and upon the premises before they give judgment thereupon, day is given to the parties aforesaid here until in eight days of Saint *Hilary* to hear their judgment thereof, for that the said justices here are not thereupon, yet, &c.

The King against The Mayor of Lincoln.

Reported in 1 Ld. Raym. 337. by the Name of The King and Morris.

WILLIAM the third, by the grace of God, of *England, Scotland, France and Ireland* king, defender of the faith, &c. To the mayor and sheriffs, citizens and commonalty of the city of *Lincoln* in our county of *Lincoln*, greeting: whereas from time whereof the memory of man is not to the contrary, there hath been had such a custom within the said city, that every person who should serve as an apprentice within the city aforesaid in any art or mystery with any freeman or his assigns, freemen of the city aforesaid, for the space of seven years, might claim the liberty and privilege to be admitted into the place and office of one of the freemen of the city aforesaid, &c. into the freedom of the city aforesaid, and according to the custom of that city to enjoy and use all the liberties, privileges, pre-eminences and commodities belonging and appertaining to a freeman of the city aforesaid. And also whereas one *Abraham Morris* hath lately served as an apprentice within the city aforesaid for the space of seven years, in the art or mystery of a mercer, with a freeman of the city aforesaid, and his assigns, freemen of the city aforesaid, according to the custom of the said city, and thereupon hath claimed the liberty and privilege to be admitted by you into the place and office of one of the freemen of the city aforesaid, and into the freedom of the said city to be admitted, and hath offered himself to perform the oath in that case required by a solemn affirmation or declaration according to the act made and set forth in the parliament holden in the 7th and 8th years of the reign of *William* the third now king of *England*, &c. he the said *Abraham* being then and there one of the dissenters commonly called quakers;

Mandamus to the mayor of Lincoln to admit one Abraham Morris to his freedom.

nevertheless you the said mayor, &c. well knowing the premisses, have not admitted the said *Abraham Morris* into the aforesaid place and office of one of the freemen, and into the freedom of the city aforesaid, nor have permitted the aforesaid *Abraham Morris* to make a solemn affirmation or declaration according to the said act, instead of the oath in that case used, according to the duty of your office, but so to do you do unjustly refuse, in contempt of us, and to the great damage of him the said *Abraham*, and to the manifest grievance and hurt of his estate, as we have received information by his complaint: we therefore willing that due and speedy justice in this behalf be done to the said *Abraham* as is right, command you and every of you, firmly enjoining that immediately after the receipt of this writ you admit the aforesaid *Abraham Morris* to the place and office of one of the freemen and to the freedom of the city aforesaid, together with all liberties, privileges, pre-eminences and commodities thereunto belonging, and permit the said *Abraham Morris* to make the solemn affirmation or declaration aforesaid, instead of the oath in that case used; or signify to us cause to the contrary, lest through your default complaint be again made unto us, &c. Witness, &c.

The Return of the Writ.

The execution of this writ appears in a certain schedule to this writ annexed.

George Bracebridge, mayor.

The Answer of the Mayor, Sheriffs, Citizens and Commonalty of the city of Lincoln to the Writ to this Schedule annexed, according to the Command of the said Writ.

We humbly certify to the lord the king that the city of *Lincoln* aforesaid is not in the county of *Lincoln*, but in the county of the city of *Lincoln*, and that there is had, and from time whereof the memory of man is not to the contrary, there hath been had such a custom within the city aforesaid, that every person who hath served as an apprentice within the city aforesaid in any art or mystery with any freeman, or his assigns freemen of the city aforesaid for the space of 7 years, hath afterwards offered himself in the common council of the mayor, sheriffs, citizens and com-

commonalty of the city aforesaid to perform the oath in that case used in these *English* words following: you shall bear faithful allegiance to our sovereign liege lord the king, (naming the king then upon the throne) and to his heirs, kings of *England*; and be meet and justifiable to the mayor of this city that now is, and his successors that hereafter shall be, all that may be for the common profit of this city you shall do, and all liberties and franchises thereof you shall maintain: to your power, all ordinances and customs made and to be made, you shall keep. You shall be levant and couchant to keep house or chamber within this city, and all manner of charges and offices laid to you for commonweal, worship or profit of this city you shall bear, and be contributory to your power. You shall have no part of merchandize with any merchant stranger to sell or colour by any means, but you shall pay toll for it. You shall colour none of infranchised mens goods, whereby the sheriffalty or the commonalty should lose their right. You shall nothing do nor labour that shall be to the prejudice, derogation or hindrance of the commonweal or profit of this city, but all points and articles, and what else belongs to be done by a freeman of this city, you shall keep and maintain to your power. So help you God. And not before, hath claimed the liberty and privilege to be admitted into the place and office of one of the freemen of the city aforesaid and into the freedom of the said city according to the custom of that city, and to enjoy and use all the liberties, privileges, pre-eminences and commodities belonging and appertaining to a freeman of the said city, and after the performing of the said oath, and not before, ought to be admitted by the common council of the mayor, sheriffs, citizens and commonalty of the city aforesaid, one of the freemen of the city aforesaid, and into the freedom of the city aforesaid, according to the custom of that city, and to enjoy and use all the liberties, privileges, pre-eminences and commodities belonging and appertaining to a freeman of the city aforesaid. And we further certify that the said *Abraham Morris* lately, to wit, on the 10th day of *February* in the eighth year of the reign of the lord the now king hath served as an apprentice within the city aforesaid for the space of seven years, in the art or mystery of a mercer with a freeman of the city aforesaid, according to the custom of the said city; and afterwards on the said 10th day of *February* in the same eighth year of the reign of the said lord the now king thereupon at the common council of the mayor, sheriffs, citizens and commonalty of the said city then holden within the city, claimed to be admitted then and there

there by the common council aforesaid to the liberty and privilege into the place and office of one of the freemen of the said city, and to the freedom of the said city, and then and there offered himself, instead of the usual form of the oath aforesaid, to make his solemn affirmation or declaration of the words of the oath aforesaid, according to the act made and set forth in the parliament holden in the seventh and eighth years of the reign of the said lord the now king of *England*, &c. intituled, An act that the solemn affirmation and declaration of the people called quakers shall be accepted instead of an oath in the usual form, he the said *Abraham* being then and yet one of the dissenters commonly called quakers; but the said *Abraham* then and there refused to make the oath in the usual form aforesaid, according to the custom of the said city. And we further certify to the said lord the king, that the office and place of a freeman of the city aforesaid, is an office and place of profit in the government in the aforesaid act mentioned; and that within the city aforesaid there is had, and from time whereof the memory of man is not to the contrary there hath been had such a custom, that every freeman of the city aforesaid should have a voice in the choosing two citizens to serve for the said city in the parliament of this kingdom, whensoever the king should ordain a parliament to be holden, and that every freeman of the said city hath common of pasture in the wastes lying within the city aforesaid for three horses, or for three cows or three heifers, at all times of the year. And we further certify to the said lord the king that the said *Abraham Morris* never offered himself in the common council of the mayor, sheriffs, citizens and commonalty of the city aforesaid to take, nor ever hath taken the said oath in the usual form aforesaid; and for these causes the said mayor, sheriffs, citizens and commonalty of the city aforesaid, have not admitted the said *Abraham Morris* into the said place and office of one of the freemen, and to the freedom aforesaid, nor have permitted the said *Abraham Morris* to make his solemn affirmation or declaration, according to the act aforesaid, instead of the oath in that case used to be made, but refused so to do the said 10th day of *February* in the said 8th year of the reign of the said lord the now king.

George Bracebridge, mayor.

Easter Term in the ninth Year of King William
the Third. Roll 367.

Asthill against Clarke. Ld. Raym. 341.

Coke.

Northamptonshire, **W**ILLIAM Clarke the younger and
(to wit) Robert Varnham were summoned to
answer John Asthill, gent. of a plea wherefore they took one
sheep of him the said John and unjustly detained the same,
against gages and pledges, &c. And whereupon the said
John by Edward Bromwich his attorney complains, that the
aforesaid William and Robert on the 14th day of April in the
8th year of the reign of the lord the now king at Darentree,
in a certain place there called the High-street, took the
sheep aforesaid, and unjustly detained the same, against gages
and pledges, until, &c. whereupon he says that he is in-
jured, and hath damage to the value of ten pounds; and
thereupon he brings suit, &c. Pledges to prosecute John
Doe and Richard Roe.

Replevin for
taking sheep in
the High-street
at Darentree.

And the said William and Robert by Thomas Pryor their
attorney come and defend the force and injury when, &c.
And as bailiffs of Daniel earl of Nottingham well acknow-
ledge the taking of the sheep aforesaid in the said place in
which, &c. and justly, &c. because they say that the said
place in which the taking of the sheep aforesaid is supposed
to be done was the soil and freehold of him the said Daniel
earl of Nottingham; and because the sheep aforesaid at the
said time when, &c. was in the said place in which, &c.
feeding on the grass there then growing, and there doing
damage to the said earl, they the said William and Robert,
as bailiffs of him the said earl, and by his command, at the
said time when, &c. well acknowledge the taking of the
sheep aforesaid in the said place in which, &c. and justly, &c.
so doing damage there, &c.

Cognizance as
bailiffs of the
earl of Notting-
ham for damage-
feasant.

And the said John Asthill saith, that the said William Clarke
the younger and Robert Varnham, for the reason before al-
leged, as bailiffs of the said Daniel earl of Nottingham,
ought not to acknowledge the taking of the said sheep of
him the said John in the place aforesaid in which, &c. to
be just, because he saith, that long before the said earl of
Nottingham had any thing in the said place in which, &c.
the

Bar to the cog-
nizance.

That queen *Elizabeth* was seised in fee in right of her duchy of *Lancaster*, and granted two fairs, &c.

the lady *Elizabeth*, late queen of *England*, was seised in her demesne as of fee in right of her duchy of *Lancaster* of and in the manor of *Daventree* in the said county of *Northampton* with the appurtenances, whereof the said place in which, &c. then was parcel; and being so seised thereof, she the said queen *Elizabeth* on the 26th day of *March* in the 18th year of her reign, by her letters patent sealed under her great seal of *England*, bearing date at *Westminster* the said 26th day of *March* in the 18th year of her reign above-said, of her special grace, for her heirs and successors, gave and granted to the bailiff, burgesses and commons of the borough of *Daventree* in the county of *Northampton*, and their successors, that they and their successors from thenceforth for ever should have and hold, and should be able to have and hold within the borough aforesaid the precincts and liberties thereof, two fairs or marts there to be holden and kept yearly, that is to say, one fair on *Tuesday* next after the feast of the *Passover*, and continually to last for two days from thence next following, and one other fair upon the feast of *Saint Matthew* the apostle, and continually to last for two days from thence next following, together with a court of piepowder, and with all profits and commodities whatsoever forthcoming, happening, arising or contingent from such fairs or marts, and with all liberties and free customs to such markets, fairs or marts belonging or appertaining, as by the letters patent aforesaid, which the said *John* brings here into court, sealed with the great seal of *England*, more fully appears: by virtue of which said grant the said bailiff, burgesses and commons of the borough of *Daventree* aforesaid, and their successors, were seised and yet are seised as of fee and right in right of their corporation aforesaid of and in one fair, yearly holden in the said place in which, &c. (called the *High-street*, being within the borough of *Daventree* aforesaid, on *Tuesday* next after the feast of the *Passover*, and continually for two days from thence next following, and of and in one other fair yearly there holden on the feast day of *Saint Matthew* the apostle, and continually for two days from thence next following, with all liberties and free customs to such fairs belonging: and the said *John* further saith, that at the fair holden at the said place in which, &c. within the said borough of *Daventree* aforesaid, on the said 14th day of *April* in the 8th year of the reign of the lord the now king above-said, being *Tuesday* next after the feast of the *Passover* last past, he the said *John* then and there in the said place in which, &c. called the *High-street* within the said borough of *Daventree* aforesaid, in the fall and open fair there bought of a certain person

And that plaintiff at one of the fairs bought the said sheep, and paid the toll for it, and had it in his custody until the defendants took it unjustly, &c.

unknown

unknown the sheep aforesaid, and then and there paid the customary toll payable for all things bought in that fair to the aforesaid bailiff, burgesses and commons of the borough of *Daventre* aforesaid, upon which the sheep aforesaid, being then and there lawfully in the custody of him the said *John*, they the said *William* and *Robert* then took that sheep of him the said *John* in the said place in which, &c. in the said fair, and have unjustly detained it, in manner and form as the said *John* above complains against them; and this the said *John* is ready to verify: wherefore since the said *William* and *Robert* have above acknowledged the taking of the sheep aforesaid, he the said *John* prays judgment and his damages, by reason of the taking and unjustly detaining of the said sheep, to be adjudged to him, &c.

And the aforesaid *William Clarke* and *Robert Varnham* say, that the plea of the said *John Ashill* above pleaded in bar of the cognizance aforesaid is not sufficient in law to exclude them the said *William* and *Robert* as bailiffs of the aforesaid *Daniel* earl of *Nottingham* from acknowledging the taking of the said sheep in the place aforesaid, in which, &c. to be just, and that they have no necessity, nor are bound by the law of the land to answer to that plea in manner and form aforesaid pleaded; and this they are ready to verify; wherefore for want of a sufficient plea of him the said *John*, they the said *William* and *Robert* pray judgment, and a return of the sheep aforesaid, together with their damages, &c. to be adjudged to them, &c.

Demurrez.

And the said *John*, for that he hath above alledged sufficient matter in law for him the said *John* to have his said action to be maintained against the said *William* and *Robert*, which said matter the said *William* and *Robert* do not deny nor answer any thing to the same, but wholly refuse to admit the said averment, prays judgment and his damages, by reason of the taking and unjustly detaining of the said sheep, to be adjudged to him, &c. And because the justices here will advise themselves of and concerning the premisses before they give judgment thereupon, day is given to the parties aforesaid here until the morrow of the Holy *Trinity*, to hear their judgment thereupon, for that the said justices here are not thereof yet, &c.

Joinder in demurrez.

Curia adjournant.

Hilary Term in the ninth Year of King William the
Third. Roll 321.

Beale and his Wife against Simpson. 1 Ld. Raym.
408.

Debt by husband
and wife, admin-
istratrix, for
an escape out-
of execution.

Declaration.

The judgment
in Com. B. Trin.
8 W. 3.

Copies ad satisf-
fac.

Yorkshire, *WILLIAM Simpson* late of *Mansfield* in the
(to wit) county of *Nottingham*, esq; chief bailiff of
the liberty of the honour of *Pontefract* in the county of *York*
aforesaid, was summoned to answer *Henry Beale*, esq; and
Hannah his wife, administratrix of the goods and chattels
which were of *John Stanhope*, esq; with the will to the ad-
ministration annexed, during the minority of *Mary Stanhope*
and *Hannah Stanhope* the daughters and residuary legatees of
the aforesaid *John Stanhope*, of a plea that he render to them
two hundred and three pounds and ten shillings, which he
unjustly detains from them, &c. and whereupon the said
Henry and *Hannah* by *Lawrence Breres* their attorney say,
that whereas they the said *Henry* and *Hannah* his wife here-
tofore, that is to say, in the term of the Holy *Trinity* in the
eighth year of the reign of the lord the now king, before
George Treby, knt. and his companions then justices of him
the said lord the king of the bench here, to wit, at *West-*
minster, by the consideration of the same court, recovered
by the name of *Henry Beale*, esq; and *Hannah* his wife,
administratrix of the goods and chattels which were of
John Stanhope, esq; with the will to the administration
annexed, during the minority of *Mary Stanhope* and *Hannah*
Stanhope the daughters and residuary legatees of the afore-
said *John*, against one *Richard Dickins*, gent. then and yet
one of the attornies of the said court of the lord the king
of the bench, otherwise called *Richard Dickins* of *Leeds* in
the county of *York*, gent. upon a certain writing obligatory
by the aforesaid *Richard* to the aforesaid *John Stanhope* in his
life-time at *Leeds* aforesaid made, sealed and delivered, as
well a certain debt of 200*l.* as seventy shillings, which to
the same *Henry* and *Hannah* his wife in the same court of
the said lord the king of the bench aforesaid here were ad-
judged for their damages which they had sustained, by oc-
casion of the detaining of that debt whereof he was con-
victed, as by the record and process thereof in the said court
of the said lord the king of the bench aforesaid here, to wit,
at *Westminster* aforesaid remaining, manifestly appears. And
also whereas they the said *Henry* and *Hannah* his wife, for
the

the obtaining execution of the judgment aforesaid afterwards in the same term of the Holy *Trinity* prosecuted out of the said court of the said lord the king of the bench aforesaid here a certain writ of him the said lord the king of *capias ad satisfaciendum*, of and upon the judgment aforesaid, against the aforesaid *Richard*, directed to the then sheriff of the county of *York* aforesaid; by which said writ the said lord the now king commanded the same then sheriff that he should take the aforesaid *Richard*, if, &c. and him safely, &c. so that he might have his body before the justices of the said lord the king here, to wit, at *Westminster* aforesaid, on *Saturday* next after fifteen days of Saint *Martin* then next following, to satisfy to them the said *Henry* and *Hannah* his wife of the debt and damages aforesaid in form aforesaid recovered; by virtue of which said writ *John Bradshaw*, esq; then being sheriff of the county of *York* aforesaid afterwards, to wit, on the first day of *August* in the 8th year above said at *Leeds* aforesaid, made and directed his certain warrant in writing, sealed with the seal of his office of sheriff of the county of *York* aforesaid, to the chief bailiff of the liberty of the honour of *Pontefract* in the county of *York* aforesaid directed, which said chief bailiff then had and yet hath the full execution and return of all writs, precepts and warrants within the same liberty, and unto whom the execution of the writ aforesaid wholly belonged to be done, so that execution thereof out of the same liberty he might not cause to be done; by which said warrant the said *John Bradshaw* commanded the chief bailiff of the liberty of the honour of *Pontefract* aforesaid, that the same bailiff should take the said *Richard* if, &c. and him safely, &c. so that the aforesaid *John Bradshaw* might have the body of the aforesaid *Richard* before the said justices of the said lord the king here, to wit, at *Westminster* aforesaid, on the aforesaid *Saturday* next after the said fifteen days of Saint *Martin*, to satisfy to them the said *Henry* and *Hannah* his wife of the debt and damages aforesaid, by virtue of which said warrant the aforesaid *William Simpson* afterwards and before the return of the writ and warrant aforesaid, to wit, on the first day of *November* in the 8th year of the reign of the said lord the now king above said, (the same *William* then being the chief bailiff of the aforesaid liberty of the honour of *Pontefract* aforesaid) at *Leeds* aforesaid, (which said town of *Leeds* is within the liberty aforesaid) took and arrested the aforesaid *Richard*, and then and there had and detained the aforesaid *Richard* in his custody in execution for the debt and damages aforesaid, by virtue of the warrant aforesaid; and the aforesaid *Richard* being so in prison under the custody of the aforesaid

Return thereof.

Warrant thereupon of the sheriff of *Yorkshire* to the bailiff of *Pontefract* liberty.

The execution executed by the defendant the bailiff of *Pontefract*.

The escape.

Commission of
letters of admi-
nistration.

William, in execution for the debt and damages aforesaid, as before is set forth, the aforesaid *William* afterwards, to wit, on the 3d day of *February* in the 8th year aforesaid (the aforesaid *William* being then and yet the chief bailiff of the liberty of the honour of *Pontefract* aforesaid) suffered the aforesaid *Richard* to escape out of his custody at *Leeds* aforesaid, and freely to go at large where he would, without the command of them the said *Henry* and *Hannah* his wife, or of either of them, and without their licence, and against the will of them the said *Henry* and *Hannah* his wife (they the said *Henry* and *Hannah* his wife, or either of them, not being then and there satisfied of, or paid the debt and damages aforesaid so recovered, as before is set forth), by which an action hath accrued to them the said *Henry* and *Hannah* his wife, to require and have of the aforesaid *William* the said two hundred and three pounds and ten shillings: nevertheless the aforesaid *William*, although often requested, the said 203*l.* and 10*s.* to the said *Henry* and *Hannah* his wife (to whom administration with the will annexed of all the goods and chattels which were of the aforesaid *John Stanhope* at the time of his death during the minority of the aforesaid *Mary* and *Hannah Stanhope*, the daughters and residuary legatees of the aforesaid *John Stanhope*, who are now in being in full life, and are yet within age, by *John*, by divine providence archbishop of *York*, primate of *England* and metropolitan, on the 29th day of *June* in the 5th year of the reign of the said lord the now king and lady *Mary* the second, late queen of *England*, &c. at *Leeds* aforesaid, after the death of the said *John Stanhope* was lawfully committed) nor to either of them hath rendered, but to render the same to them, or to either of them, hath hitherto wholly denied, and yet doth deny, and unjustly detains the same, whereupon they the said *Henry* and *Hannah* his wife say, that they are injured, and have sustained damage to the value of 40*l.* and thereupon they bring suit, &c. And they bring here into court the letters of administration with the will annexed of the aforesaid archbishop, which testify the commission of the administration aforesaid in form aforesaid, &c.

Bar, that before
the escape an-
te. cor. issued,

And the aforesaid *William Simpson* by *Henry Wood* his attorney comes and defends the force and injury when, &c. and saith that the said *Henry* and *Hannah* ought not to have their said action thereof against him, because he saith, that before the aforesaid time when the aforesaid escape of the aforesaid *Richard Dickins*, or the permission of his going out of the custody of him the said *William* is supposed to be done, to wit, on the 23d day of *January* in the 8th year of the

the reign of the lord the now king aboveſaid, a certain writ of him the ſaid lord the king of *habeas corpus*, iſſued out of the court of the ſame lord the king of the bench here, to wit, at *Weſtmiſter* in the county of *Middleſex*, directed to the bailiff of the liberty of the honour of *Pontefract* aforeſaid, by which ſaid writ the ſaid lord the king commanded the ſaid bailiff of the liberty aforeſaid, that he ſhould have the body of the aforeſaid *Richard Dickins* detained in the priſon of the ſaid lord the king, under the cuſtody of the aforeſaid bailiff, together with the day and cauſe of his caption and detention, by whatſoever name the ſame *Richard* ſhould be named in the ſame, before the juſtices of him the ſaid lord the king here, to wit, at *Weſtmiſter* aforeſaid, on *Saturday* next after the purification of the bleſſed *Mary* then next following, to do and receive that which the ſame court here ſhould then and there conſider concerning him in that behalf, and that the ſame bailiff ſhould have there then that writ; which writ afterwards and before the aforeſaid time when the eſcape aforeſaid is ſuppoſed to have been ſuffered, to wit, on the 27th day of *January* in the 8th year aboveſaid at *Leeds* aforeſaid to the aforeſaid *William* (being then and yet bailiff of the liberty aforeſaid) was delivered to be executed in due form of law; by virtue of which ſaid writ the ſaid *William* afterwards and before the return thereof, to wit, on the ſaid third day of *February* in the 8th year aboveſaid at *Leeds* aforeſaid, took the body of the aforeſaid *Richard* out of the priſon and gaol of the ſaid lord the king of the liberty aforeſaid, and carried the ſame under the cuſtody of him the ſaid *William* from the priſon aforeſaid by the common and neareſt way unto *Weſtmiſter* aforeſaid, and in court here at the return of the ſaid writ had the ſame, according to the command of the ſame writ, and to the ſame court here in a certain ſchedule to the ſame writ annexed hath returned the day and cauſe of the caption and detention of him the ſaid *Richard* in the form following, that is to ſay, that before the coming of that writ the ſaid *Richard* was taken within the liberty aforeſaid, and was detained in the priſon of the ſaid lord the king, under the cuſtody of him the ſaid *William*, by virtue of the ſaid warrant in the declaration aforeſaid mentioned for the debt and damages aforeſaid ſpecified in that declaration, and that that was the only cauſe of the caption and detention of the aforeſaid *Richard* in the priſon and cuſtody aforeſaid, which together with the body of him the ſaid *Richard*, at the day and place in the ſaid writ of *habeas corpus* mentioned, according to the command of that writ he had ready, and thereupon the ſaid *Richard* then, to wit, at the ſaid day of the

returnable
Gra. Pur.

Delivery of
that writ to
deſcendant.

The return
thereof.

Commitment
to the *Fleet*.

Which is the
same escape,
&c.

Replication
protestando as to
the said *ba. cor.*
and replies a
different *ba. cor.*

Issued out the
28th *Novem.*

Returnable
Octob. *Hil.*

the return of the same writ by the same court here was committed to the prison of the said lord the king of the *Fleet* on the occasion aforesaid, there to remain until, &c. as by the record of that writ and the said return thereof, and the commitment aforesaid in the court here remaining, more fully appears; which said taking of the said *Richard* out of the said prison and gaol aforesaid, and carrying of the said *Richard* from that prison unto *Westminster* aforesaid, done for the cause aforesaid, is the same escape, and suffering of the said *Richard* to escape and go at large out of the custody of him the said *William*, whereof the said *Henry* and *Hannah* themselves now above complain; and this he is ready to verify: wherefore he prays judgment if the said *Henry* and *Hannah* ought to have their said action thereof against him, &c.

And the aforesaid *Henry* and *Hannah* his wife protesting, that the said writ of *habeas corpus* in the said plea of the said *William* above mentioned was not delivered to the said *William* before the said time the said escape in the said declaration of them the said *Henry* and *Hannah* above mentioned was suffered, as the said *William* in his said plea hath alledged: nevertheless for replication to the said plea of the said *William* they say, that by anything by the said *William* above alledged they ought not to be barred from having their said action against the said *William*, because they say, that on the 28th day of *November* in the 8th year of the reign of the said lord the now king aforesaid, a certain writ of him the said lord the king of *habeas corpus*, issued out of the said court of the said lord the king of the bench aforesaid here, to wit, at *Westminster* aforesaid, to the bailiff of the liberty of the honour of *Pontefract* aforesaid directed: by which said writ the said lord the now king commanded the said bailiff of the liberty of the honour of *Pontefract* aforesaid, that he should have the body of the said *Richard Dickins*, by whatsoever name he should be named in the prison of the said lord the now king, under the custody of the said bailiff of the liberty aforesaid, together with the day of the caption and detention of the said *Richard*, before the justices of the said lord the king here, to wit, at *Westminster* aforesaid on *Saturday* next after eight days of *Saint Hilary* then next following, (being the 23d day of *January* in the 8th year of the reign of the said lord the now king aforesaid) that they the said justices of the said lord the king of the bench here aforesaid having seen the cause, might be able to do in that behalf that which was of right to be done, according to the law and custom of the kingdom of *England*; and that the same bailiff should then

then have there that writ; which said writ afterwards and before the return thereof, to wit, on the ninth day of *December* in the 8th year abovesaid at *Leeds* aforesaid, was delivered to the aforesaid *William*, then being bailiff of the liberty aforesaid, to be executed in form of law, but the aforesaid *William* at or before the return of the said writ did nothing thereupon, but by colour and pretence of that writ after the return thereof, to wit, on the said 3d day of *February* in the 8th year abovesaid at *Leeds* aforesaid, without any other writ, precept or authority, and against the will of them the said *Henry* and *Hannah* his wife, took the body of the aforesaid *Richard* out of the said prison and gaol of the said lord the king of the liberty aforesaid, and the same to *Westminster* aforesaid, under the custody of the aforesaid *William* afterwards to wit, on the 6th day of *February* in the 8th year abovesaid, brought and there had; and the aforesaid *Richard* being there, afterwards to wit, the same 6th day of *February* in the 8th year abovesaid, by fraud and covin between him the said *William*, and other persons to them the said *Henry* and *Hannah* his wife unknown, the said writ of *habeas corpus* in the said plea of the said *William* above specified was sued forth out of the said court of the bench aforesaid here, and delivered to him the said *William*, and not before; by which said writ the said lord the king also commanded the said bailiff of the liberty aforesaid in manner and form as the said *William* by his said plea hath above alledged; by virtue of which said writ of *habeas corpus* last mentioned, the said *William*, the body of the aforesaid *Richard* afterwards, to wit, the same 6th day of *February*, being the said *Saturday* next after the purification of the blessed *Mary*, brought into the said court of the said lord the king of the bench here, and in the same court then and there had, and to the said court here in a certain schedule to the same writ of *habeas corpus* last mentioned annexed returned the day and cause of the caption and detention of the aforesaid *William* in the form as the aforesaid *William* by his plea aforesaid hath above pleaded; and thereupon the said *Richard* afterwards, to wit, the said 6th day of *February* in the 8th year abovesaid, being the day of the return of the said writ of *habeas corpus* last mentioned, was committed by the said court of the said lord the king of the bench aforesaid here to the said prison of the said lord the king of the *Fleet*, on the occasion aforesaid, there to remain until, &c. as the aforesaid *William* hath above alledged; without this, that the said *William*, by virtue of the said writ of *habeas corpus* in the said plea of him the said *William* mentioned, took the body of the aforesaid

which was delivered to defendant 9th of Dec.

That after the return of it on 3d of Feb. he took defendant in the judgment by colour, &c. and brought him to Westminster the 6th of Feb.

And the same day by fraud, &c. the *ba. cor.* in the plea was sued forth and delivered to defendant and not before.

That by virtue of the last *ba. cor.* defendant in the judgment was brought to Westminster said 6th of February,

and was thereupon committed to the Fleet.

Traverse.

aforesaid *Richard* out of the said prison and gaol of the said lord the king of the liberty aforesaid, and carried the same from the prison aforesaid to *Westminster*, as the aforesaid *William* by his said plea hath also above alledged; and this they the said *Henry* and *Hannah* his wife are ready to verify; whereupon they pray judgment and their said debt, together with their damages, by occasion of the detention of that debt, to be adjudged to them, &c.

Special demur-
rer.

And the aforesaid *William* saith, that the said plea of them the said *Henry* and *Hannah* above pleaded in reply, and the matter in the same contained, are not sufficient in law for them the said *Henry* and *Hannah* to have their said action to be maintained against him the said *William*; and that he to that plea in manner and form aforesaid pleaded hath no necessity, nor is bound by the law of the land to answer; and this he is ready to verify: wherefore for want of a sufficient plea of them the said *Henry* and *Hannah* in this behalf the said *William* prays judgment, and that the said *Henry* and *Hannah* may be barred from having their said action against him the said *William*, &c. And for cause of this demurrer in law the said *William* sheweth to the court here, and saith, that the traverse aforesaid is repugnant, and traverseth matter not traversable, &c.

Cause.

Joinder in
demurrer.

And the aforesaid *Henry* and *Hannah* protesting that the said traverse in their replication above contained is not repugnant, but good and sufficient in law; and that they the said *Henry* and *Hannah* have traversed matter traversable, say, that they have above alledged in reply sufficient matter in law for them the said *Henry* and *Hannah* to have their said action to be maintained against the aforesaid *William Simpson*, which they are ready to verify; which said matter the said *William* doth not deny, nor in any way answereth to the same, but hath wholly refused to admit that averment, wherefore as before they the said *Henry* and *Hannah* pray judgment and their debt aforesaid, together with their damages, by occasion of the detention of that debt, to be adjudged to them, &c.

Michaelmas,

then have there that writ; which said writ afterwards and before the return thereof, to wit, on the ninth day of *December* in the 8th year abovesaid at *Leeds* abovesaid, was delivered to the abovesaid *William*, then being bailiff of the liberty abovesaid, to be executed in form of law, but the abovesaid *William* at or before the return of the said writ did nothing thereupon, but by colour and pretence of that writ after the return thereof, to wit, on the said 3d day of *February* in the 8th year abovesaid at *Leeds* abovesaid, without any other writ, precept or authority, and against the will of them the said *Henry* and *Hannah* his wife, took the body of the abovesaid *Richard* out of the said prison and gaol of the said lord the king of the liberty abovesaid, and the same to *Westminster* abovesaid, under the custody of the abovesaid *William* afterwards to wit, on the 6th day of *February* in the 8th year abovesaid, brought and there had; and the abovesaid *Richard* being there, afterwards to wit, the same 6th day of *February* in the 8th year abovesaid, by fraud and covin between him the said *William*, and other persons to them the said *Henry* and *Hannah* his wife unknown, the said writ of *habeas corpus* in the said plea of the said *William* above specified was sued forth out of the said court of the bench abovesaid here, and delivered to him the said *William*, and not before; by which said writ the said lord the king also commanded the said bailiff of the liberty abovesaid in manner and form as the said *William* by his said plea hath above alledged; by virtue of which said writ of *habeas corpus* last mentioned, the said *William*, the body of the abovesaid *Richard* afterwards, to wit, the same 6th day of *February*, being the said *Saturday* next after the purification of the blessed *Mary*, brought into the said court of the said lord the king of the bench here, and in the same court then and there had, and to the said court here in a certain schedule to the same writ of *habeas corpus* last mentioned annexed returned the day and cause of the caption and detention of the abovesaid *William* in the form as the abovesaid *William* by his plea abovesaid hath above pleaded; and thereupon the said *Richard* afterwards, to wit, the said 6th day of *February* in the 8th year abovesaid, being the day of the return of the said writ of *habeas corpus* last mentioned, was committed by the said court of the said lord the king of the bench abovesaid here to the said prison of the said lord the king of the *Fleet*, on the occasion abovesaid, there to remain until, &c. as the abovesaid *William* hath above alledged; without this, that the said *William*, by virtue of the said writ of *habeas corpus* in the said plea of him the said *William* mentioned, took the body of the abovesaid

which was delivered to defendant 9th of Dec.

That after the return of it on 3d of Feb. he took defendant in the judgment by colour, &c. and brought him to Westminster the 6th of Feb.

And the same day by fraud, &c. the *ba. cor.* in the plea was sued forth and delivered to defendant and not before.

That by virtue of the last *ba. cor.* defendant in the judgment was brought to Westminster said 6th of February,

and was thereupon committed to the *Fleet*.

Traverse.

aforesaid *Richard* out of the said prison and gaol of the said lord the king of the liberty aforesaid, and carried the same from the prison aforesaid to *Westminster*, as the aforesaid *William* by his said plea hath also above alledged; and this they the said *Henry* and *Hannah* his wife are ready to verify, whereupon they pray judgment and their said debt, together with their damages, by occasion of the detention of that debt, to be adjudged to them, &c.

Special demur-
rer.

And the aforesaid *William* saith, that the said plea of them the said *Henry* and *Hannah* above pleaded in reply, and the matter in the same contained, are not sufficient in law for them the said *Henry* and *Hannah* to have their said action to be maintained against him the said *William*; and that he to that plea in manner and form aforesaid pleaded hath no necessity, nor is bound by the law of the land to answer; and this he is ready to verify: wherefore for want of a sufficient plea of them the said *Henry* and *Hannah* in this behalf the said *William* prays judgment, and that the said *Henry* and *Hannah* may be barred from having their said action against him the said *William*, &c. And for cause of this demurrer in law the said *William* sheweth to the court here, and saith, that the traverse aforesaid is repugnant, and traverseth matter not traversable, &c.

Cause.

Joinder in
demurrer.

And the aforesaid *Henry* and *Hannah* protesting that the said traverse in their replication above contained is not repugnant, but good and sufficient in law; and that they the said *Henry* and *Hannah* have traversed matter traversable, say, that they have above alledged in reply sufficient matter in law for them the said *Henry* and *Hannah* to have their said action to be maintained against the aforesaid *William Simpson*, which they are ready to verify; which said matter the said *William* doth not deny, nor in any way answereth to the same, but hath wholly refused to admit that averment, wherefore as before they the said *Henry* and *Hannah* pray judgment and their debt aforesaid, together with their damages, by occasion of the detention of that debt, to be adjudged to them, &c.

Michaelmas,

Michaelmas, the 10th of William the Third. Plea Roll 255.

Mosley against Coldwell. 1 Ld. Raym. 430.

Yorkshire, **RICHARD Mosley**, the son and heir of *Richard Mosley* deceased, by *William Radcliff* his attorney demands against *Thomas Coldwell* two messuages, twenty acres of land, twenty acres of meadow, and twenty acres of pasture with the appurtenances in *Shelley*, of which *John Mosley* the grandfather of the aforesaid *Richard* the son, was seised in his demesne as of fee; and by a certain indenture made between him the said *John* and *Joseph Lockwood* and *John Clay*, covenanted and granted with them the said *Joseph* and *John Clay*, that he the said *John* the grandfather and his heirs should stand and be seised of the tenements aforesaid with the appurtenances, to the use of *Richard Mosley* the son and heir of the said *John* the grandfather and the heirs males of his body lawfully begotten or to be begotten; and that after the death of the said *Richard* the son and heir of the said *John* the grandfather, they ought to descend to the aforesaid *Richard* the son and heir of the said *Richard*, by form of the covenant and grant aforesaid, and by force of the statute, &c. and whereupon he saith that the said *John Mosley*, the grandfather of the said *Richard* on the 18th day of *October* in the tenth year of the reign of *Charles* the first late king of *England*, &c. was seised of and in the tenements aforesaid with the appurtenances in his demesne as of fee; and being so seised thereof, he the said *John Mosley* afterwards, to wit, the same 18th day of *October* in the tenth year aforesaid, by a certain indenture made between him the said *John Mosley* of the one part, and the said *John Lockwood* and *John Clay* of the other part, at *Shelley* aforesaid, and here brought into court, for and in consideration of the intire love and affection which he the said *John* the grandfather bore towards the aforesaid *Richard* the son and heir apparent, and that the tenements aforesaid should continue and remain in the blood and name of the aforesaid *John* the grandfather as long as God should permit the same, covenanted and granted with them the said *Joseph Lockwood* and *John Clay*, their executors and administrators, that he the said *John* the grandfather and his heirs, and all other person and persons who then were or at any time afterwards should and might be seised of the tenements aforesaid with the appurtenances, should stand and be seised thereof to the use of *Richard Mosley*

Formedon in
defender upon
a covenant to
stand seised.

Adofley his son and heir apparent, and the heirs males of his body lawfully begotten or to be begotten; by virtue whereof and by force of the statute made in the parliament of *Henry* the 8th late king of *England*, and holden at *Westminster* in the county of *Middlesex* the fourth day of *February* in the 27th year of his reign, of transferring uses into possession, the said *Richard Mosley* the son of the said *John* was seised of the tenements aforesaid with the appurtenances in his demesne as of fee and right, according to the form of the covenant and grant aforesaid, &c. in the time of peace in the time of the lord *Charles* the second late king of *England*, &c. within twenty years now last past, by taking the profits thereof to the value, &c. and from him the said *Richard* the son of the said *John Mosley* the right descends, by form, &c. to him the said *Richard*, who demands the right as son and heir of the said *Richard*, his father, and which after his death, &c. and thereupon he brings suit, &c.

Non tenure as
to part,

And the aforesaid *Thomas* by *Henry Hemingway* his attorney comes, and as to one messuage, ten acres of land, fifteen acres of meadow and fifteen acres of pasture with the appurtenances, parcel of the tenements aforesaid with the appurtenances above demanded, saith, that he cannot render the same tenements, parcel, &c. to the aforesaid *Richard* the now demandant, because he saith that he is not tenant of the same one messuage, ten acres of land, fifteen acres of meadow and fifteen acres of pasture with the appurtenances, or of any parcel thereof, as of freehold, neither was he so on the day of obtaining of the original writ of the said *Richard*, nor at any time afterwards, but one *John Downes* is, and on the day of obtaining that writ was thereof tenant as of freehold; and this he is ready to verify: whereupon as to the same tenements, parcel, &c. with the appurtenances, he the said *Thomas* prays judgment of the writ, &c. And as to one messuage, ten acres of land, five acres of meadow and five acres of pasture with the appurtenances, residue of the tenements aforesaid above demanded, he the said *Thomas* defends his right when, &c. and saith that the said *Richard* the now demandant, after the death of the said *Richard* his father, into the same tenements the residue with the appurtenances entered, as into lands to him in form aforesaid descending, and was thereof seised; and this he is ready to verify; whereupon as to the same tenements with the appurtenances the residue, &c. he the said *Thomas* also prays judgment of the writ aforesaid, &c.

and shews who
is the tenant of
that part.

And as to the
residue that
demandant
entered.

And

And the said *Richard Mosley*, as to the said plex of the said *Thomas* as to the said one messuage, ten acres of land, 15 acres of meadow and 15 acres of pasture, parcel of the tenements aforesaid with the appurtenances, above demanded above pleaded in abatement of the said writ, saith, that that writ for the reason above alledged ought not to be abated, because he saith, that on the day of obtaining the said original writ of him the said *Richard Mosley*, that is to say, on the 18th day of *February* in the ninth year of the reign of the lord the now king, the aforesaid *Thomas* was tenant of those tenements with the appurtenances as of freehold, as by the writ aforesaid is supposed; and he prays that this may be inquired of by the country, and the aforesaid *Thomas* likewise, &c. And as to the said plea of the said *Thomas* as to the said one messuage, ten acres of land, five acres of meadow and five acres of pasture with the appurtenances above pleaded, he the said *Richard* saith, that by any thing in that behalf above pleaded his said writ ought not to be abated, because he saith, that the said plea by him the said *Thomas* above pleaded in that behalf, and the matter in the same contained, are not sufficient in law to abate the said writ in that part to which the said *Richard* hath no necessity, nor is bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient answer in this behalf, he the said *Richard* prays judgment, and that his said writ in that part may be adjudged good, and that the aforesaid *Thomas* may answer over to the writ in that part, &c.

Replication to the non-tenure that the tenant, was tenant and issue.

To the residue demandant demurs.

Joinder in demurrer.

Trinity, the 9th of King William the Third. Roll
302.

Kinsey against Hayward. 1 Ld. Raym. 432.

London, **H**ENRY Hayward late of Southwark in the (to wit) county of Surry, carpenter, executor of the last will and testament of *John Hayward* deceased, was attached to answer *Mary Kinsey* widow, administratrix of the goods and chattels which were of *Thomas Kinsey*, knt. her late husband, who died intestate, &c. of a plea of trespass upon the case, &c. And whereupon the said *Mary* by *Francis Jackson* her attorney complains, that whereas the aforesaid *John* in his life-time, to wit, on the fifth day of August

Assumpsit by an administrator against an executor.

Money lent.

Upon an account stated.

Letters of administration granted.

August in the year of our Lord 1682, at *London* in the parish of the blessed *Mary* of the arches in the ward of *Cheape*, was indebted to the said *Thomas* in his life-time in 50*l.* of lawful money of *England*, for monies by him the said *Thomas* in his life-time before that time advanced and lent to the said *John*; and being thereof so indebted, he the said *John* in consideration thereof afterwards, to wit, the same fifth day of *August* in the year of our Lord 1682, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the said *Thomas* in his life-time then and there faithfully promised that he the said *John*, the said 50*l.* to him the said *Thomas*, when he should be thereunto afterwards requested, would well and faithfully pay and content. And also whereas the aforesaid *John* in his life-time afterwards, to wit, the fourth day of *February* in the year of our Lord 1692, at *London* aforesaid in the parish and ward aforesaid, accounted together with the aforesaid *Thomas* in his life-time of and concerning divers other sums of money by the aforesaid *John* before that time owing and payable for divers sums of money by the said *John* of the said *Thomas* before that time borrowed, had and received, and being then unpaid; and upon that account he the said *John* was then and there found in arrear towards him the said *Thomas* in other 50*l.* of the like lawful money of *England*; and being thereupon so found in arrear, the aforesaid *John* in consideration thereof afterwards, to wit, the same fourth day of *February* in the year of our Lord 1692 aforesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the said *Thomas* then and there faithfully promised that he the said *John* the said 50*l.* last mentioned to him the said *Thomas*, when he should be thereunto afterwards requested, would well and faithfully pay and content: nevertheless the aforesaid *John* in his life-time, and the said *Henry* after the death of him the said *John*, the aforesaid several promises and undertakings of the aforesaid *John* in his life-time in form aforesaid made, not at all regarding, but contriving and fraudulently intending him the said *Thomas* in his life-time, and the aforesaid *Mary* after the death of him the said *Thomas* in this behalf craftily and subtilly to deceive and defraud, the aforesaid several sums of money, or any part thereof, to him the said *Thomas* in his life-time, or to the aforesaid *Mary* after the death of him the said *Thomas* (to which said *Mary* after the death of him the said *Thomas*, administration of all the goods and chattels which were of the said *Thomas* at the time of his death, by *Thomas* by divine providence archbishop of *Canterbury* primate of all *England* and metropolitan, to whom

whom in that behalf it belonged, to commit administration, on the 13th day of *February* in the year of our Lord 1696, at *London* aforesaid in the parish and ward aforesaid, was committed in due form of law) have not paid or contented, nor hath either of them paid, or in any manner for the same contented, (although to do this the aforesaid *John* in his life-time, and the said *Henry* after the death of him the said *John* by the said *Thomas* in his life-time, and after the death of the said *Thomas* the said *Henry* by her the said *Mary* afterwards, to wit, on the 29th day of *April* in the year of our Lord 1697, and often afterwards, at *London* aforesaid in the parish and ward aforesaid, have been requested) but the said *John* in his life-time, and the said *Henry* after the death of him the said *John*, the aforesaid several sums of money, or any part thereof, to him the said *Thomas* in his life-time have wholly refused to pay, and the said *Henry* to pay the same to the said *Mary* after the death of the said *Thomas*, or in any manner to content her for the same yet wholly refuses, to the damage of her the said *Mary* of 100*L.* and in delay of the execution of the administration of the goods and chattels aforesaid; and thereupon she brings suit, &c. And she brings here into court the letters of administration of the said archbishop, which testify the commission of the administration aforesaid to the said *Mary* in form aforesaid, &c.

And the aforesaid *Henry* by *Culverwell Needler* his attorney comes and defends the force and injury when, &c. and saith that the said *Mary* ought not to have her said action thereof against him, because he saith, that the said *John* in his life-time, at any time within six years next before the day of obtaining the original writ of her the said *Mary*, did not assume upon himself in manner and form as the aforesaid *Mary* above complains against him; and this he is ready to verify: whereupon he prays judgment if the said *Mary* ought to have her said action thereof against him, &c.

Bar, non assumptis
infra sex annos.

And the aforesaid *Mary* saith that she, by any thing by the said *Henry* above pleaded, ought not to be barred from having her said action against him, because she saith that the aforesaid *Thomas* in his life-time, by the name of *Thomas Kinsley*, knt. and within six years after the cause of action aforesaid above specified accrued, to wit, on the 28th day of *May* in the 4th year of the reign of the lord *James* the second late king of *England*, &c. for the recovery of his damages by occasion of the non-performance of the several promises and undertakings in the declaration aforesaid in form aforesaid above mentioned, sued forth out of the court of chancery

Replication,
that the intestate
within 6 years
sued forth an
original,

in trespass *quare
clausum fregit*
against testator,

with an inten-
tion to declare
for the cause in
the present de-
claration.

That the testa-
tor did not ap-
pear, but died.

Another writ in
trespass,

chancery of the said late king (the same court being then at *Westminster* in the county of *Middlesex*) a certain original writ of the said late king of a certain plea of trespass against the aforesaid *John*, by the name of *John Hayward* late of *Southwark* in the county of *Surry* carpenter, directed to the then sheriff of the county of *Dorset*, by which said writ the said late king commanded the said then late sheriff of the county of *Dorset*, that if the said *Thomas* should make him secure of prosecuting his claim, then he should put by gages and safe pledges the aforesaid *John*, that he should be before the then justices of the said late king on the morrow of the ascension of our Lord then next following, to shew wherefore with force and arms the close of him the said *Thomas* at *Beamsister* he had broken, and other wrongs to him had done, to the great damage of him the said *Thomas*, and against the peace of the said late king, and that he should have there the names of the pledges and that writ; which said writ he the said *Thomas* sued forth against the said *John*, with an intention that upon the appearance of him the said *John* to the said writ of him the said *Thomas*, he the said *Thomas*, according to the custom of the court of the bench here from time whereof the memory of man is not to the contrary used and approved in the same, would declare thereupon against the aforesaid *John* for the cause aforesaid mentioned in the declaration of her the said *Mary*, but he the said *John* did not appear, but afterwards, to wit, the first day of *April* in the year of our Lord 1693, at *London* aforesaid in the parish and ward aforesaid died, upon which the aforesaid *Thomas* recently, to wit, on the twelfth day of *April* in the fifth year of the reign of the lord the now king and of lady *Mary* the late queen, for the recovery of his damages by occasion of the non-performance of the several promises and undertakings in the declaration in form aforesaid above mentioned, sued forth out of the court of chancery of the said lord the now king and lady the late queen (the said court being then at *Westminster* in the county of *Middlesex*) a certain other original writ of the said lord the now king and lady the late queen of a plea of trespass against the aforesaid *Henry*, by the name of *Henry Hayward* late of *Southwark* in the county of *Surry*, directed to the then sheriff of the county of *Dorset*; by which said writ the said lord the now king and lady *Mary* the late queen then commanded the sheriff of the county of *Dorset*, that if the said *Thomas* should make him secure of prosecuting his claim, then he should put by gages and safe pledges the aforesaid *Henry*, that he should be before the then justices of the said lord

lord the now king and lady *Mary* the late queen from *Easter* day in fifteen days then next following, to shew whereof with force and arms the clofe of him the said *Thomas* at *Beamister* he had broken, and other wrongs to him had done, to the great damage of him the said *Thomas*, and against the peace of the said lord the now king and of the late queen, and that he should have there the names of the pledges, and that writ; which said writ he the said *Thomas* sued forth against the said *Henry*, with an intention that upon the appearance of him the said *Henry*, to the said writ of him the said *Thomas*, he the said *Thomas*, according to the custom of the court of the bench here, from time whereof the memory of man is not to the contrary, used and approved in the same, would declare thereupon against the said *Henry* as executor of the will of the aforesaid *John* for the cause aforesaid in the declaration of her the said *Mary* mentioned; but he the said *Henry* did not appear, and the aforesaid *Thomas* afterwards, to wit, on the fifth day of *February* in the 8th year of the reign of the lord the now king, at *London* aforesaid in the parish and ward aforesaid died, and thereupon the administration aforesaid was committed to her the said *Mary* the day, year and place, and in the manner and form in the declaration of her the said *Mary* above specified; upon which the said *Mary* recently, to wit, on the 29th day of *April* in the ninth year of the reign of the lord the now king, sued forth out of the court of chancery of the said lord the now king the same court being then at *Westminster* aforesaid in the county of *Middlesex* aforesaid, the original writ of him the said lord the now king in the said plea of trespass upon the case, returnable in the court of the lord the king of the bench here on the morrow of the ascension of our Lord, in the ninth year of the reign of the lord the now king, to which said original writ of her the said *Mary* the aforesaid *Henry* in the term of *Easter* last past appeared by *Culverwell Needler* her attorney in the said court of the lord the king of the bench here, and thereupon she the said *Mary* in the said term of *Easter* last past hath declared against the aforesaid *Henry* of the plea aforesaid in manner and form above said; and the aforesaid *Mary* saith that the said *Thomas* sued forth the said original writ of him the said *Thomas* against the said *John* with an intention that upon the appearance of him the said *John* to the said writ of him the said *Thomas* he the said *Thomas* would declare thereupon against the said *John* for the cause aforesaid in the declaration of her the said *Mary* mentioned, according to the custom of the said court of the bench here, and that the cause of action aforesaid first accrued within

to the same intent as before.

That the defendant did not appear, and the intestate of plaintiff died.

An original for the plaintiff in case,

to which the defendant hath appeared,

and thereupon the plaintiff has declared as above.

Averments.

six

six years next before the day of obtaining the said original writ of him the said *Thomas*; and that the said *Thomas* after the death of him the said *John* sued forth the said original writ of him the said *Thomas* against the said *Henry* with an intention that upon the appearance of him the said *Henry* to the said writ of him the said *Thomas*, he the said *Thomas* would declare thereupon against the aforesaid *Henry* for the cause aforesaid in the declaration of her the said *Mary* mentioned, according to the custom of the said court of the bench here; and that the aforesaid *Thomas* in the said several original writs of him the said *Thomas* named, and the aforesaid *Thomas* in the writ and declaration of her the said *Mary* above named, are one and the same person, and not others nor divers; and that the aforesaid *John* in the said first original writ of him the said *Thomas* above named, and the said *John* in the writ and declaration of her the said *Mary* above named, are one and the same person, and not others or divers; and that the said *Henry* the now defendant, and the said *Henry* in the said original writ of him the said *Thomas* above named, are one and the same person, and not others nor divers; and this she is ready to verify: whereupon she prays judgment and her damages, by occasion of the premises, to be adjudged to her, &c.

Demurrer, and joinder in demurrer.

Trinity Term in the 6th Year of William and Mary. Roll 507.

Tonkin against Crocker. Ld. Raym. 880.

Replevin for
taking a brass
pan.

Cornwall, *JAMES Crocker*, gent. and *Leonard Billing* (to wit) were summoned to answer *William Tonkin* of a plea wherefore they took one brass pan of him the said *William*, and unjustly detained the same, against gages and pledges, &c. And whereupon the said *William* by *Philip Hawkins* his attorney complains that the aforesaid *James* and *Leonard* on the fourth day of *November* in the fifth year of the reign of our lord *William* and our lady *Mary* now king and queen of *England*, &c. at the parish of *Saint Agnes*, in a certain place there called *the Kitchen*, took one brass pan of him the said *William*, and unjustly detained the same, against gages and pledges, until, &c. whereupon he saith that he is injured, and hath damage to the value of one hundred shillings, and thereupon he brings his suit, &c.

And

And the aforesaid *James* and *Leonard* by *John Foot* their attorney, come and defend the force and injury when, &c. and as bailiffs of *William Mobun*, esq; well acknowledge the taking of the said brass pan in the place in which, &c. and justly, &c. because they say that before the said time when the taking of the said brass pan is supposed to be done, one *Hugh Tonkin*, esq; was seised of a certain messuage and fifty acres of land called *Trewartha* with the appurtenances, in the parish of *Saint Agnes* aforesaid in the county aforesaid, whereof the aforesaid place called *The Kitchen* is, and at the said time when, &c. was parcel, in his demesne as of fee, and held the tenements aforesaid of the aforesaid *William Mobun* as of his manor of *Mithian* with the appurtenances in the same county by fealty, and the rent of four shillings to be paid every year at the feast of *Saint Michael* the archangel, and also by doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor, of which said services the aforesaid *William Mobun* was seised by the hands of the said *Hugh Tonkin*, as by the hands of his very tenant, that is to say, by fealty and suit of court aforesaid, as of fee and right and of the rent aforesaid in his demesne as of fee; and because four shillings for the rent aforesaid for one year ended at the feast of *Saint Michael* the archangel in the fifth year of the reign of the said now lord the king and lady the queen to the aforesaid *William Mobun* at the said time when, &c. were in arrear not paid, and suit of court at the court of the said *William Mobun* of his manor aforesaid at the parish of *Saint Agnes* within the said manor, on the 24th day of *October* in the fifth year of the reign of the said lord the king and said lady the queen abovesaid, holden for the said manor, was not done, they the said *James* and *Leonard*, as bailiffs of the said *William Mobun*, well acknowledge the taking of the brass pan aforesaid in the said place in which, &c. for the rent aforesaid so being in arrear, and for the suit of court so not done, as in parcel of the tenements aforesaid with the appurtenances, holden of the aforesaid *William Mobun* in manner aforesaid, and justly, &c. as within his fee and demesne, &c.

Cognisance as
bailiffs of a
manor.

And the aforesaid *William Tonkin* saith that the said *James* and *Leonard*, as bailiffs of the aforesaid *William Mobun*, ought not to acknowledge the taking of the said brass pan in the said place in which, &c. to be just, because protesting that the said *William Mobun* was not seised of the services aforesaid as he above supposes, he the said *William Tonkin* for plea saith that the aforesaid *Hugh Tonkin* held the tenements aforesaid of the aforesaid *William Mobun*, as

Plea in bar to
the cognisance.

Traverse.

of his manor of *Mithian* aforesaid, by the rent of four shillings for every year, to be paid at the feast of Saint *Michael* the archangel only; without this, that the aforesaid *Hugh Tonkin* held the tenements aforesaid of the aforesaid *William Mobun* as of his manor aforesaid with the appurtenances, by fealty, and the rent of four shillings, to be paid every year at the feast of Saint *Michael* the archangel, and also by doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor, as the aforesaid *James* and *Leonard* have above alledged, and this he is ready to verify: wherefore since the said *James* and *Leonard* have above acknowledged the taking of the said brass pan in the said place in which, &c. he the said *William Tonkin* prays judgment and his damages, by occasion of the taking and unjustly detaining the said brass pan, to be adjudged to him, &c.

Replication and
issue on the
traverse.

And the aforesaid *James* and *Leonard* as before say, that the said *Hugh Tonkin* held the tenements aforesaid of the aforesaid *William Mobun* as of his manor aforesaid with the appurtenances, by fealty, and the rent of four shillings, to be paid every year at the feast of Saint *Michael* the archangel, and also by doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor, as they the said *James* and *Leonard* have above in pleading alledged; and of this they put themselves upon the country, and the aforesaid *William* likewise: therefore the sheriff is commanded that he cause to come here from the day of the Holy *Trinity* in three weeks twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. at which day the jury between the parties aforesaid of the plea aforesaid was respited between them here until this day, to wit, from the day of Saint *Michael* in three weeks then next following, unless the justices of the lord the king, assigned to take the assizes in the county aforesaid, by form of the statute, &c. on *Wednesday* the first day of *August* next, past, at *Lanceston* in the county aforesaid should before come: and now here at this day come as well the said *William* as the said *James* and *Leonard* by their attornies aforesaid, and the said justices assigned to take the assizes, before whom, &c. have sent here their record in these words: Afterwards on the day and at the place within contained, before *John Powell*, knt. one of the justices of the lord the king and lady the queen of the bench, and *Thomas Rokeby*, knt, one other of the justices of the said lord the king and lady the queen of the bench, justices of the said lord the king and lady the queen assigned to take the assizes in the county of *Cornwall*, by form of the statute, &c. came the within named *William*

Nisi prius.

Postea.

Tonkin

Tonkin by his attorney within contained, and the within written *James Crocker*, gent. and *Leonard Billing*, although solemnly called did not come, but made default; therefore the jury, whereof mention is within made, is taken against them by default: and the jurors of that jury being called, some of them, that is to say, *Edward Vowell*, *Ferdinando Spiller* and *Francis Kelley* came and are sworn upon that jury: and because the rest of the jurors of the same jury did not appear, therefore others of the by-standers, chosen by the sheriff of the county aforesaid for this purpose, at the request of the said *William Tonkin*, and by the command of the justices aforesaid are newly appointed, whose names are affiled in the panel within written, according to the form of the statute in such case lately made and provided; and the jurors so newly appointed, that is to say, *Godfrey White*, *Giles Richards*, *Edward Mitchell*, *Reginald Cooke*, *John Cooke*, *Nicholas Leigh*, *John Goodman*, *George Bazon* and *William Payte* being called likewise came, who being chosen, tried and sworn to speak the truth concerning the matters within contained, together with the other jurors aforesaid before impanelled and sworn to this purpose, say upon their oath, that long before the within written time when the taking of the within written brass pan is within supposed to be done, the manor of *Mithian* in the county within written within mentioned was an antient manor, of which said manor the within named *William Mobun*, esq; is, and at the within written time of the taking of the said brass pan was seised in his demesne as of fee: and the jurors aforesaid further say upon their oath aforesaid, that within the manor aforesaid, from time whereof the memory of man is not to the contrary, there hath been an antient court holden there before the steward of the manor aforesaid for the time being twice in the year, and there hath been several freehold tenants and several suitors who have done suit at the court aforesaid of the same manor; and that the within named *Hugh Tonkin*, esq; and all his ancestors were freehold tenants of the same manor, and have holden the messuage and tenements within mentioned in the avowry within written of the aforesaid *William Mobun* and his predecessors lords of the same manor, as of his manor of *Mithian* aforesaid with the appurtenances, by fealty, and the rent of four shillings, to be paid every year at the feast of Saint *Michael* the archangel, and also by doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor, as within mentioned in the avowry within written: and the jurors aforesaid further say upon their oath aforesaid, that in the within manor of *Mithian* aforesaid there is, and for twenty years

Tales de circum-
stantibus.

Special verdict.

now last past there hath been one only freehold tenant or free suitor, to wit, the aforesaid *Hugh Tonkin*, but at the within written time when, &c. and also from time whereof the memory of man is not to the contrary there was, have been and now are several customary and conventional tenants and suitors of the same manor: and the jurors aforesaid further say upon their oath aforesaid, that for rent and service in arrear the aforesaid *James Crocker* and *Leonard Billing*, as bailiffs of the said *William Mohun*, esq; lord of the manor of *Mithian* aforesaid within written, at the time when, &c. took and detained the brass pan within mentioned in the declaration within written: but whether upon the whole matter aforesaid found by the jurors aforesaid in form aforesaid the said *Hugh Tonkin* held the tenements within mentioned in the cognizance within written of the aforesaid *William Mohun*, as of his manor aforesaid with the appurtenances, by fealty, and the rent of four shillings to be paid every year at the feast of Saint *Michael* the archangel, and also by doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor or not, the jurors aforesaid are wholly ignorant, and thereupon they pray the advice and consideration of the justices of the court of the said lord the now king here of the bench: and if upon the whole matter aforesaid found by the jurors aforesaid in form aforesaid, it shall seem to the justices of the court of the said lord the now king of the bench here, that the said *Hugh Tonkin* did not hold the tenements aforesaid of the said *William Mohun* as of his manor aforesaid with the appurtenances, by fealty, and the rent of four shillings to be paid every year at the feast of Saint *Michael* the archangel, and also by doing service and suit at the court of the manor aforesaid to be holden twice in the year at that manor, then they the said jurors say upon their oath aforesaid, that the said *Hugh Tonkin* did not hold the tenements aforesaid of the said *William Mohun* as of his manor aforesaid with the appurtenances, by fealty, and the rent of four shillings to be paid every year at the feast of Saint *Michael* the archangel, and also by doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor, as the said *James Crocker* and *Leonard Billing* within in pleading have alledged; and then they assess the damages of him the said *William Tonkin* by the occasion within written, besides his costs and charges by him laid out about his suit in this behalf, to two-pence, and for those costs and charges to 40 shillings; but if, &c. (so conclude in the usual form).

Michaelmas Term in the 5th Year of William and Mary, in C. B. Roll 445.

Gerrard against Gerrard. 1 Ld. Raym. 72.

Staffordshire, **ELIZABETH** Gerrard widow, who was the Dower.
(to wit) wife of Digby lord Gerrard baron of Gerrard's Bromley, by Isaac Hawkins her attorney, demands against Charles lord Gerrard baron of Gerrard's Bromley, the third part of one capital messuage called Bromley Hall with the appurtenances in Ridge, Padmore, Asbley, the parishes of Ecclelhal and Audley, and of the hundred of Pynehill with the appurtenances, and of one hundred and one shillings rent in the same hundred, as the dower of her the said Elizabeth, of the endowment of the said Digby, heretofore her husband, &c. and it is to be known that the said Elizabeth in the court of the lord the king and lady the queen here made her demand, in the writ, of the third part of three other messuages, one dovecote, four barns, four gardens, four orchards, and four hundred and six acres of land with the appurtenances; and the said Elizabeth now doth abridge her demand to the said third part of the said capital messuage, hundred and rent, with the appurtenances, &c.

Abridgment of the demand.

And the said Charles lord Gerrard by George Wheeler his attorney comes, and as to the said capital messuage called Bromley Hall with the appurtenances, parcel of the tenements aforesaid with the appurtenances, in the demand aforesaid above specified, saith that the said Elizabeth Gerrard ought not to have her dower of the capital messuage aforesaid with the appurtenances of the endowment of the said Digby lord Gerrard heretofore her husband, because he saith that the said capital messuage in the demand aforesaid mentioned is named and called, and on the day of obtaining the said original writ of her the said Elizabeth, and also from time whereof the memory of man is not to the contrary, was named and called as well by the name of Gerrard's Bromley, as by the name of Bromley Hall, and that long before the day of obtaining the said original writ of the said Elizabeth, that is to say, on the 20th day of July in the first year of the reign of the lord James the first late king of England, one Thomas Gerrard, knt. was seised of the said capital messuage with the appurtenances, (amongst other things) in his demesne as of fee; and being so seised thereof, the said late king James the first, by certain letters patent under his great seal of England, bearing date at Westminster in the county of Middlesex

Tenant pleads *deten non*.

Thomas Gerrard created a baron by Jac. 1.

alasex the first day of *July* in the first year above said, (the exemplification whereof sealed, under the great seal of *England*, bearing date at *Westminster* the first day of *April* in the first year of the reign of the lord and lady the now king and queen, he the said *Charles* lord *Gerrard* brings here into court) advanced, preferred and created the said *Thomas Gerrard* to the state, degree, dignity and honour of baron *Gerrard* of *Gerrard's Bromley* afore said in the said county of *Stafford*, and preferred, constituted and created him the said *Thomas Gerrard* baron *Gerrard* of *Gerrard's Bromley* afore said, and by the said letters patent assigned and gave to him the said *Thomas* the name, stile, dignity and title of baron *Gerrard* of *Gerrard's Bromley*; to have and to hold to the said *Thomas Gerrard* and his heirs male of his body issuing for ever. And the said late king by his same letters patent further granted to him the said *Thomas Gerrard*, that he and his heirs male should have, hold and possess, and every one of them should have, hold and possess a seat and place, and voice in parliament, and in the public assemblies and councils of the said late king his heirs and successors, within his kingdom of *England*, amongst the other barons, as barons of parliament, and of the public assemblies and councils, as by the same letters patent, among other things, more fully appears: by virtue of which said letters patent the said *Thomas Gerrard* was seised as of fee-tail of the state, degree, dignity and honour of baron *Gerrard* of *Gerrard's Bromley* afore said, and was a baron of this kingdom of *England*, to wit, to himself and his heirs male of his body issuing, and was commorant and resiant with his family, servants and attendants in the said capital messuage of *Gerrard's Bromley*, called *Bromley Hall*; and the said capital messuage with the appurtenances became the head of the barony of him the said *Thomas* lord *Gerrard*, baron *Gerrard* of *Gerrard's Bromley* and was and hath continued to be, and yet continueth and is the head of the barony. And the said *Charles* lord *Gerrard* farther saith, that the said *Thomas* lord *Gerrard*, baron *Gerrard* of *Gerrard's Bromley* afore said, being so seised of the said barony, and the said capital messuage with the appurtenances the head of his barony afore said, he the said *Thomas* lord *Gerrard*, baron *Gerrard* of *Gerrard's Bromley*, afterwards at *Gerrard's Bromley* afore said died seised of such his estate; after whose death the said barony and capital messuage, the head of the said barony with the appurtenances descended to *Gilbert* lord *Gerrard*, as son and heir of the said *Thomas* lord *Gerrard*, whereby the said *Gilbert* lord *Gerrard* entered into the said capital messuage with the appurtenances, and was seised thereof in his demesne as of fee, and

That he was
commorant at
Bromley Hall.

which was
caput baronie.

Descent to
Gilbert lord
Gerrard.

of the barony and honour aforefaid as of fee-tail and right, and was commorant and refiant in the faid capital meffuage; and being fo feifed thereof, he the faid *Gilbert lord Gerrard* died feifed of fuch his eftate thereof, after whose death the faid barony and capital meffuage, the head of the faid barony with the appurtenances, defcended to *Dutton lord Gerrard* as fon and heir of the faid *Gilbert lord Gerrard*; whereby the faid *Dutton lord Gerrard* entered into the faid capital meffuage with the appurtenances, and was feifed thereof in his demefne as of fee, and of the barony and honour aforefaid as of fee-tail and right, and was commorant and refiant in the faid capital meffuage; and being fo feifed thereof, he the faid *Dutton lord Gerrard* died feifed of fuch his eftate thereof, after whose death the faid barony and capital meffuage the head of the faid barony with the appurtenances defcended to *Charles lord Gerrard* as fon and heir of *Dutton lord Gerrard*, whereby the faid *Charles lord Gerrard* entered into the faid capital meffuage with the appurtenances, and was feifed thereof in his demefne as of fee, and of the barony and honour aforefaid as of fee-tail and right, and was commorant and refiant in the faid capital meffuage; and being fo feifed thereof, he the faid *Charles lord Gerrard* afterwards, to wit, on the 25th day of *November* in the twelfth year of the reign of the lord *Charles* the fecond late king of *England*, &c. at *Gerrard's Bromley* aforefaid, by his certain indenture made between him the faid *Charles lord Gerrard* of the one part, and certain perfons, *Charles Fane*, efq; commonly called lord *Le Difpencer*, *Edward Rockingham*, *Kildare lord Digby* of *Geshall* in *Ireland*, and *Anthony Cope* bart. by the names of *Charles*, commonly called lord *Le Difpencer* eldeft fon and heir apparent of the moft noble *Mildmay* earl of *Westmorland*, *Edward lord Rockingham* of *Caforo de Rockingham* in the county of *Northampton*, *Kildare lord Digby* of *Geshall* in the kingdom of *Ireland*, and *Anthony Cope* of *Hamwall* in the county of *Oxford*, bart. of the other part; and in confideration of a certain fum of money to him the faid *Charles lord Gerrard*, by the faid *Charles lord Le Difpencer*, *Edward lord Rockingham*, *Kildare lord Digby* and *Anthony Cope*, in hand paid, bargained and fold to the faid *Charles lord Le Difpencer*, *Edward lord Rockingham*, *Kildare lord Digby* and *Anthony Cope*, the faid capital meffuage with the appurtenances (among other things) to have and to hold to the faid *Charles lord Le Difpencer*, *Edward lord Rockingham*, *Kildare lord Digby* and *Anthony Cope*, their executors, administrators and assigns, from the day next before the date of the faid indenture, for and during and unto the full end and term of fix months from thence next following and fully to be compleat and ended;

Then to *Dutton lord Gerrard*.

Then to *Charles lord Gerrard*.

The marriage
settlement of
*Charles lord
Gerrard*.

by

by virtue of which said bargain and sale, and also by force of a certain act made and provided in the parliament of lord *Henry* the 8th late king of *England*, holden at *Westminster* in the county of *Middlesex* on the fourth day of *February* in the 27th year of his reign, for transferring of uses into possession, they the said *Charles* lord *Le Dispencer*, *Edward* lord *Rockingham*, *Kildare* lord *Digby* and *Anthony Cope* were possessed of the said capital messuage with the appurtenances; and being so possessed thereof, and the said *Charles* lord *Gerrard* being seised of the reversion thereof in his demesne as of fee, he the said *Charles* lord *Gerrard* afterwards, to wit, on the 29th day of *November* in the 12th year above-said, at *Gerrard's Bromley* aforesaid, by a certain indenture quadripartite, made between him the said *Charles* lord *Gerrard*, by the name of the noble *Charles* lord *Gerrard* of *Gerrard's Bromley* in the county of *Stafford* of the first part, one *George Digby* esq; and *Jane Digby* spinster, by the names of *George Digby* of *Sandon* in the county of *Stafford* esq; and *Jane Digby* sole daughter and only child of the said *George Digby* of the second part, the aforesaid *Charles Fane* called lord *Le Dispencer*, *Edward* lord *Rockingham*, *Kildare* lord *Digby* of *Geshall* in *Ireland*, and *Anthony Cope*, of the third part, and *Edward Littleton* bart. *Walter Chetwind* the younger esq; *Thomas Kinnerley* esq; and *William Chetwind* esq; by the names of *Edward Littleton* of *Pelleton Hall* in the county of *Stafford* bart. *Walter Chetwind* the younger of *Ingestrey* in the said county of *Stafford* esq; and *William Chetwind* of *Ridgley* in the said county of *Stafford* esq; of the fourth part, granted to the said *Charles* lord *Le Dispencer*, *Edward* lord *Rockingham*, *Kildare* lord *Digby* and *Anthony Cope*, their heirs and assigns, the reversion of the said capital messuage with the appurtenances; to have and to hold to the said *Charles* lord *Le Dispencer*, *Edward* lord *Rockingham*, *Kildare* lord *Digby* and *Anthony Cope*, their heirs and assigns, to the use and behoof of the said *Charles* lord *Gerrard* and his heirs until the time of the solemnization of the then intended marriage between the said *Charles* lord *Gerrard* and the said *Jane Digby*; and from and after the solemnization of the then intended marriage, then to the use and behoof of the said *Charles* lord *Gerrard* for and during the term of his natural life without impeachment of waste; and from and after the determination of the said estate of the said *Charles* lord *Gerrard*, to the use and behoof of the said *Edward Littleton*, *Walter Chetwind*, *Thomas Kinnerley* and *William Chetwind* and their heirs during the natural life of the said *Charles* lord *Gerrard*; and after his decease, then to the use and behoof of the first son of the said *Charles* lord *Gerrard* on the
body

The uses of the
settlement to
1, 2, 3, &c.
sons in tail
male.

body of the said *Jane Digby* lawfully to be begotten, and to the heirs male of the body of such first son lawfully issuing; and for want of such issue, then to the use and behoof of the second son of the said *Charles* lord *Gerrard* on the body of the said *Jane Digby* lawfully to be begotten, and to the heirs male of the body of such second son lawfully issuing; and for want of such issue, then to the use and behoof of the third son of the said *Charles* lord *Gerrard* on the body of the said *Jane Digby* lawfully to be begotten, and to the heirs male of the body of such third son lawfully issuing; and for want of such issue, then to the use and behoof of all and every the son and sons of the said *Charles* lord *Gerrard* on the body of the said *Jane* lawfully to be begotten successively as they shall be in seniority of age and priority of birth, one after another, and of the heirs males of their respective bodies lawfully to be begotten, always preferring the elder son and the heirs male of his body before the younger and the heirs male of his body to be begotten; and for want of such issue, or in case that the said *Jane* shall happen to be with child at the time of the decease of the said *Charles* lord *Gerrard*, then to the use and behoof of the said *Jane* until her death, or the birth or delivery of such child or children of whom or which she the said *Jane* shall be so pregnant at the time of the death of the said *Charles* lord *Gerrard*, which shall first happen, and afterwards to the use and behoof of the first son of the said *Charles* lord *Gerrard* on the body of the said *Jane* begotten, and to the heirs male of the body of such first son lawfully to be begotten; and for want of such issue, to the use of all and every the sons of the said *Charles* lord *Gerrard* on the body of the said *Jane* lawfully to be begotten, and of their heirs males of their respective bodies to be begotten successively; and for want of such issue in case the said *Charles* lord *Gerrard* should have any issue female living by him on the body of the said *Jane* begotten, then to the use and behoof of them the said *Edward Littleton*, *Walter Chetwind*, *Thomas Kinnersley* and *William Chetwind*, their executors, administrators and assigns, from the day of the death of the said *Charles* lord *Gerrard*, for and during the term and space of 500 years from thence next following and fully to be compleat and ended; and after the end, expiration, surrender or other determination of the said term, to the use and behoof of the heirs male of the body of the said *Thomas* lord *Gerrard* great grandfather of the said *Charles* lord *Gerrard*; and for want of such issue, then to the use and behoof of the right heirs of the said *Charles* lord *Gerrard* for ever, by virtue of which said grant, and also by force of the said act for transferring of uses into possession, the said *Charles* lord *Gerrard* was seized of the said capital

If only daughters then to trustees for 500 years.

capital messuage the head of the said barony with the appurtenances to him and his heirs until the time of the solemnization of the said intended marriage; and being so, seised thereof, the said marriage between the said *Charles* lord *Gerrard* and the said *Jane Digby* afterward, to wit, on the 30th day of *November* in the 12th year of the reign of the said late king *Charles* the second, at *Gerrard's Bromley* aforesaid was solemnized; and the said *Charles* lord *Gerrard* was then and there espoused and married to the said *Jane* according to the rites of the church of *England*, whereby the said *Charles* lord *Gerrard* was seised of the said capital messuage being the head of his said barony with the appurtenances in his demesne as of freehold for the term of his life, the remainder thereof appertaining in form aforesaid; and being so seised thereof, he the said *Charles* lord *Gerrard* afterwards had issue of the body of the said *Jane* his then wife begotten, to wit, the said *Digby*, afterwards lord *Gerrard*, his only son, to wit, at *Gerrard's Bromley* aforesaid: and afterwards the said *Charles* lord *Gerrard* died there without issue female of his body issuing, after whose death the said barony descended to the said *Digby* lord *Gerrard* as son and heir of the said *Charles* lord *Gerrard*; and the said *Digby* lord *Gerrard* named in the demand aforesaid into the said capital messuage with the appurtenances (being the head of his said barony as before is set forth) entered and was seised thereof in his demesne as of fee-tail, that is to say, to him and his heirs male of his body issuing, with remainder thereof to his heirs male, and of the barony and honour aforesaid as of fee-tail and of right, and was commorant and resident in the said capital messuage; and being so seised thereof, he the said *Digby* lord *Gerrard* afterwards at *Gerrard's Bromley* aforesaid died so seised thereof, and there commorant without issue male of his body issuing, whereby the said barony and the remainder of the said capital messuage the head of the said barony with the appurtenances above limited to the heirs male of the body of the said *Thomas* lord *Gerrard* descended from him the said *Digby* lord *Gerrard* to him the said *Charles* now lord *Gerrard* as cousin and heir male of the body of the said *Thomas* lord *Gerrard*, that is to say, as son and heir of *Richard* *Gerrard* the son and heir of *John* *Gerrard* the son of the said *Thomas* lord *Gerrard* and brother of the said *Gilbert* lord *Gerrard*, whereby he the said *Charles* now lord *Gerrard* entered into the said capital messuage with the appurtenances, being the head of his said barony, and was and yet is seised thereof in his demesne as of fee-tail, to wit, to him and the heirs male of the body of the said *Thomas* lord *Gerrard* issuing, and of the barony aforesaid as of fee-tail and right; and this he is ready

Descent from
Charles lord
Gerrard to *Dig-*
by lord *Gerrard*,

then to *Charles*
lord *Gerrard*.

to verify: whereupon he prays judgment if the said *Elizabeth* ought to have her dower of the said capital messuage with the appurtenances (being the head of the barony of him the said *Charles* now lord *Gerrard*, as before is set forth) of the endowment of the said *Digby* lord *Gerrard* heretofore her husband; with this, that he the said *Charles* now lord *Gerrard* will further verify that he the said *Charles* now lord *Gerrard* after the death of the said *Digby* lord *Gerrard*, and before the day of obtaining of the said original writ of the said *Elizabeth*, to wit, on the 20th day of *March* in the third year of the reign of the lord *James* the second now king of *England*, &c. at *Gerrard's Bromley* afore said assigned to the said *Elizabeth* divers messuages, lands and tenements with the appurtenances, of a great yearly value, to wit, being of the yearly value of 400*l.* being the full third part of the other messuages and lands which were of the said *Digby* lord *Gerrard* her late husband, whereof the said *Elizabeth* was dowable, to have to her the said *Elizabeth* for the term of her life in the name of her dower: happening to her of the said other messuages and lands, besides the tenements afore said in the demand afore said mentioned, which were of the said *Digby* lord *Gerrard* heretofore her husband, in the several counties of *Stafford* and *Chester*; to which said assignment of dower of the said other messuages and lands the said *Elizabeth* then agreed and accepted thereof, to wit, at *Gerrard's Bromley* afore said; and as to the said hundred of *Pynehill*, and one hundred and one shillings rent; being the residue of the tenements afore said with the appurtenances in the demand afore said above specified, he the said *Charles* now lord *Gerrard* saith that he the said *Charles* now lord *Gerrard* from the time of the death of the said *Digby* lord *Gerrard* always hitherto hath been and yet is ready to render to the said *Elizabeth* her dower of the same hundred and rent; and he here in court renders the same to her, &c. whereupon she the said *Elizabeth* prays judgment and seisin of the third part of the said hundred and rent with the appurtenances, to be adjudged to her, &c. therefore it is considered that the said *Elizabeth* do recover her seisin against the said *Charles* of the said third part of the said hundred and rent with the appurtenances; and the said *Charles* in mercy, &c.

And the said *Elizabeth* as to the plea of the said *Charles* as to the said capital messuage called *Bromley Hall* with the appurtenances above pleaded in bar saith, that that plea, and the matter in the same contained, are not sufficient in law to bar her the said *Elizabeth* from having her dower of the said capital messuage with the appurtenances, and that she hath no necessity, neither is she bound by the law of the land

Averment that the tenant did assign other lands for the demandant's dower,

to which she agreed.

And as to the demand of the 3d part of the hundred and rent, that tenant is ready to render, &c.

Judgment for the demandant for the 3d part of the hundred and rent.

Demurrer to the other part of the plea.

land to answer to the said plea in manner and form aforesaid above pleaded; and this she is ready to verify: wherefore for want of a sufficient answer in this behalf she the said *Elizabeth* prays judgment and her dower of the said capital messuage with the appurtenances, to be adjudged to them, &c.

Joinder in demand.

And the said *Charles* lord *Gerrard* since he hath above alleged sufficient matter in law in his said plea as to the said capital messuage called *Bromley Hull* with the appurtenances to bar the said *Elizabeth* from having her dower aforesaid of the same capital messuage with the appurtenances, which he is ready to verify; which said matter the said *Elizabeth* doth not deny, nor in any way answereth to the same, but wholly refuses to admit that averment, as before prays judgment, and that the said *Elizabeth* may be barred from having her dower of the said capital messuage with the appurtenances: and because the justices here will advise themselves of and upon the premises before they give judgment thereupon, day is given to the parties aforesaid here until in eight days of *Saint Hilary*, to hear their judgment thereupon, for that they the said justices here are not yet, &c.

Judgment *per tot' cur'* for the demandant in *C. B.* which was affirmed in *B. R.* upon a writ of error.

Pleas before our Lord the King at Westminster of the Term of Saint Hilary in the seventh Year of the Reign of our Lord William the Third, now King of England, &c. Roll 697.

Hicks against Downing. 1 *Ld. Raym.* 99.

Action upon the case for negligently keeping fire, by which a messuage of plaintiff demised to defendant was burnt.

Somersetshire, **BE** it remembered that heretofore, to wit, in (to wit) the term of *Saint Michael* last past before the lord the king at *Westminster* came *Sarah Hicks* widow, by *Thomas Callow* her attorney, and brought into the court of our said lord the king then there her certain bill against *John Downing* in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill followeth in these words, (to wit) *Somersetshire,* (to wit) *Sarah Hicks* widow complains of *John Downing* being in the custody of the marshal of the *Marshalsea* of our lord the king before the king himself, for that, to wit, That whereas the said *Sarah* on the 26th day of *January* in the year of our Lord

Lord 1692 was lawfully possessed of and in a certain messuage situate, lying and being in *East Dundry* in the county aforesaid, for a certain term of years then and as yet to come and unexpired; and being so possessed thereof, she the said *Sarah* the same day and year aforesaid at *East Dundry* aforesaid demised the messuage aforesaid (among other things) to the said *John Downing* to have and to hold to the said *John Downing* from the 25th day of *March* then next following for the term of three years, if the said *Sarah Hicks* and *John Downing*, and *Thomas Downing* and *Edith* the father and mother of him the said *John Downing* should so long live: by virtue of which said demise the said *John Downing* afterwards, to wit, on the 26th day of *March* in the year of our Lord 1693 entered into the messuage aforesaid, and (among other things) was possessed thereof for the said term of three years above demised to him the reversion thereof belonging to her the said *Sarah* for the residue of the said term first above mentioned: and the same *Sarah* in fact saith, that as well the said *Thomas Downing* and *Edith* as the said *John Downing* are yet in being and in full life, to wit, at *East Dundry* aforesaid: nevertheless the said *John Downing* well knowing the premises, but contriving and maliciously intending very much to damnify and aggrieve her the said *Sarah* in this behalf, he the said *John Downing* on the 20th day of *June* in the year of our Lord 1695, (being so possessed of the messuage aforesaid, as before is set forth, the reversion thereof belonging to her the said *Sarah* in form aforesaid) so negligently and improvidently kept his fire in the messuage aforesaid, that by reason thereof the same messuage was then burnt, and is wholly ruined, whereupon she the said *Sarah* saith that she is injured, and hath sustained damage to the value of 500*l.* and thereupon she brings suit, &c.

And now at this day, to wit, *Thursday* next after eight days of Saint *Hilary* in this same term, until which day the said *John* had leave to imparl to the said bill, and then to answer, &c. before the lord the king at *Westminster* comes as well the said *Sarah* by her said attorney as the said *John* by *Samuel Brewster* his attorney; and the said *John Downing* defends the force and injury when, &c. and saith that he is not thereof guilty; and of this he puts himself upon the country, and the aforesaid *Sarah* likewise: therefore let a jury come thereupon before the lord the king at *Westminster* on *Wednesday* next after eight days of the purification of the blessed *Mary*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Imparance.

Not guilty.

Entered

Entered of Easter Term in the 7th Year of William
the Third. 1 Ld. Raym. 192.

Reynoldson against Blake and the Bishop of
London.

Quare impedit of
the church of
St. Andrew
Wardrobe.

The fire of
London 1666.
St. Ann Black-
friars and St.
Andrew's
Wardrobe
were burnt.

The act for
union of se-
veral parish
churches,

particularly St.
Ann's and An-
drew's, and St.
Andrew's
Wardrobe to be
the parish
church.

The patrons to
present by turns.

Who to present
the first time.

London, **HENRY** Bishop of London and Robert Blake (to wit) clerk were summoned to answer Thomas Reynoldson, William Bradford and George Woolfe, of a plea that they permit them to present a fit person to the church of Saint Andrew Wardrobe, otherwise Saint Andrew near Baynard's Castle, which is void, and belongs to their gift, &c. And whereupon the said Francis, George and William by Joseph Tate their attorney say, that in the late terrible conflagration of the city of London, happening on the second day of September in the year of our Lord 1666, as well the parish church of Saint Ann Blackfriars, in the ward of Farringdon Within, as the said parish church of Saint Andrew Wardrobe, otherwise Saint Andrew near Baynard's Castle, in the ward of Castle Baynard, and divers other parish churches within the city of London were burnt; and they the said Francis, William and George further say, That by a certain act in the parliament of the said lord Charles the second late king of England, &c. holden at Westminster in the county of Middlesex in the 22d year of his reign, set forth, (amongst other things) it is enacted by the authority of the same parliament, That the parish of Albhallows Breadstreet and the parish of Saint John the evangelist within the same city should be united into one parish, and the church before belonging to the parish of Albhallows Breadstreet should be rebuilt, and should be the parish church of the said parishes so united; and that the parish of Saint Andrew Wardrobe and the parish of Saint Ann Blackfriars within the said city should be united into one parish, and the church before belonging to the said parish of Saint Andrew Wardrobe should be the parish church of the said parishes so united. And by the same act it was further enacted, That the several and respective patrons of the said churches so united, should and might present by turns to that church only, which by the said act was appointed to be rebuilt and established for the parish church of the parishes so united as aforesaid; and that the first presentment to that church should be made by the patron of such of the said churches, the endowments whereof were of the greatest yearly value, as by the same act

act (among other things) is more fully manifest and appeareth. And they the said *Francis, William and George* further say, that at the time of the making of the said act of parliament, the endowment of the said church of Saint *Andrew Wardrobe*, otherwise Saint *Andrew near Baynard's Castle*, was of greater yearly value than the endowment of the vicarage of the said church of Saint *Ann Blackfriars*, to wit, at *London* in the parish of Saint *Andrew Wardrobe*, otherwise Saint *Andrew near Baynard's Castle* in the ward of *Castle Baynard* aforesaid; and that at the said time of the making of the act of parliament aforesaid one *Thomas Gouge* was seised in his demesne as of fee of and in the rectory impropriate of the said parish of Saint *Ann Blackfriars* in the ward of *Farringdon Within*, to which the advowson of the vicarage of the parish church of Saint *Ann Blackfriars* in the ward aforesaid then did belong, and he was the undoubted patron of the same vicarage; and that the lord *Charles* the second late king of *England*, at the said time of the making of the said act of parliament, was the undoubted patron of the said church of Saint *Andrew Wardrobe*, otherwise Saint *Andrew near Baynard's Castle*, and was seised of the advowson of the said church of Saint *Andrew Wardrobe*, otherwise Saint *Andrew near Baynard's Castle* in the ward of *Castle Baynard* aforesaid, as of fee and right, in right of his crown of *England*; and that the said church of Saint *Andrew Wardrobe*, otherwise Saint *Andrew near Baynard's Castle*, in the ward of *Castle Baynard*, at the said time of the making of the said act of parliament, was full of one *James Cade*, doctor of divinity, then rector of the same parish, and that the said *Thomas Gouge* being so seised of the aforesaid rectory of Saint *Ann Blackfriars*, to which, &c. he the said *Thomas Gouge* afterwards, to wit, on the 29th day of *April* in the 25th year of the reign of the said lord *Charles* the second, late king of *England*, &c. at *London* aforesaid, in the parish of Saint *Andrew Wardrobe* aforesaid, in the ward of *Castle Baynard* aforesaid, by his writing indented made between the said *Thomas Gouge*, by the name of *Thomas Gouge* late of the parish of Saint *Sepulchre, London* clerk, son and heir of *William Gouge* late of *Blackfriars, London* doctor of divinity deceased of the one part, and *Benjamin Whiccomb* of *London* doctor of divinity, *John Elsum* feltmaker, *Francis Reynoldson* taylor, *John Young* the elder stonemason, *Peter Sambrooke* apothecary, *William Bradford* taylor, *William Lawrence* baker, *Thomas Flint* feltmaker, *Andrew Hedges* taylor, *Robert Tyne* clothworker, *Richard Boote*, *Henry Johnson* victualler, *John Kue* feltmonger, *Henry Hills* printer, *John Crapp* woodmonger, and *George Woolfe* taylor, inhabitants within the precinct of *Blackfriars London*

St. Andrew's of greater value.

At the time of the act, Thomas Gouge was seised in fee of Blackfriars,

and K. Charles 2. was patron of St. Andrew's.

At the time of the act J. C. was incumbent of St. Andrew's Wardrobe.

Thomas Gouge sells his advowson of Blackfriars to several of the inhabitants in fee.

of

of the other part, the counterpart whereof, sealed with the seal of the aforesaid *Thomas Gouge*, they the said *William, Francis* and *George* bring here into court, the date whereof is the same day and year, gave and granted to the said *B. W. &c.* (naming the rest of the grantees) the said rectory of *Saint Ann Blackfriars*, to which, &c. To have and to hold the said rectory of *Saint Ann Blackfriars*, to which, &c. to the said grantees (naming them) and to their heirs and assigns for ever; by reason whereof the said grantees (naming them) were, and became seised in their demesne as of fee of and in the said rectory impropriate of *Saint Ann Blackfriars* aforesaid, to which, &c. with the appurtenances; and that afterwards, to wit, on the last day of *July* in the 25th year of the reign of the said lord *Charles* the second late king of *England*, &c. the aforesaid *James Cade*, at *London* aforesaid, in the parish of *Saint Andrew Wardrobe* aforesaid, in the ward of *Castle Baynard* aforesaid died; by whose death the said church of *Saint Andrew Wardrobe*, otherwise *Saint Andrew near Baynard's Castle*, in the ward of *Castle Baynard* aforesaid, was first void after the making of the said act of parliament; and thereupon the said late king *Charles* the second, according to the tenor and purport of the said act, in his turn presented one *John Stoning* his clerk to the said church of *Saint Andrew Wardrobe*, otherwise *Saint Andrew near Baynard's Castle*, being so void; who, upon the presentation of him the said late king, was there lawfully admitted, instituted and inducted in the same, in the time of peace, in the time of him the said late king *Charles* the second; which said presentation was the first and next presentation made to that church after the making of the act aforesaid; and that the church being full of the said *John Strong*, the said *B. W. J. E. J. Y. P. S. W. L. T. F. A. H. R. T. R. B. H. J. J. K. H. H.* and *J. C.* at *London* aforesaid in the parish of *Saint Andrew Wardrobe* aforesaid in the ward of *Castle Baynard* aforesaid died, whereby the said *Francis Reynoldson, William Bradford* and *George Woolfe* were seised of the said rectory of *Saint Ann Blackfriars*, to which, &c. in their demesne as of fee, by right of survivorship, and by virtue of the act of parliament aforesaid had the right of presenting to the said church of *Saint Andrew Wardrobe*, otherwise *Saint Andrew near Baynard's Castle*, when vacant, in their turn, as patrons of the said vicarage of *Saint Ann Blackfriars* aforesaid: and that the said *John Stoning* afterwards, to wit, on the 15th day of *August* in the 6th year of the reign of the lord the now king and of the lady *Mary* the late queen of *England*, &c. at *London* aforesaid in the parish of *Saint Andrew Wardrobe* aforesaid,

J. C. died, by which *St. Andrew's* was first void after the act, and *Charles* ad presented *J. S.*

who was instituted and inducted.

The inhabitants of *Blackfriars* all dead but the plaintiffs.

J. S. the king's incumbent dies.

aforesaid in the ward of *Castle Baynard* aforesaid died; by whose death the said church of *Saint Andrew Wardrobe*, otherwise *Saint Andrew* near *Baynard's Castle* was void, by reason whereof it belongeth to them the said *Francis, William* and *George* to present, as in their turn a fit person to the church of *Saint Andrew Wardrobe*, otherwise *Saint Andrew* near *Baynard's Castle* aforesaid, being so void; and the aforesaid *Henry* and *Robert Blake* unjustly hinder them: whereupon they say that they are injured, and have damage to the value of 100*l.* and thereupon they bring suit, &c.

whereby the plaintiffs as the surviving grantees ought to present.

To this declaration there is a general demurrer, and a joinder in demurrer.

Pleas before our Lord the King at Westminster of the Term of the Holy Trinity in the seventh Year of the Reign of William the Third, now King of England, &c. Roll 176.

Bacon against Dubarry. 1 Ld. Raym. 246.

London, **B**E it remembered that heretofore, to wit, in the (to wit) term of *Easter* last past before the lord the king at *Westminster* came *Josiah Bacon* by *William Baker* his attorney, and brought into the court of the said lord the king then there his certain bill against *David Dubarry*, otherwise called *David Dubarry* of *London* merchant, in the custody of the marshal, &c. of a plea of debt; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, (to wit) *London*, (to wit) *Josiah Bacon* complains of *David Dubarry*, otherwise called *David Dubarry* of *London* merchant, being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, of a plea that he render to him 600*l.* of lawful money of *England*, which he owes to him and unjustly detains, for that, to wit, That whereas the aforesaid *David* on the 8th day of *November* in the year of our Lord 1694, at *London* in the parish of the blessed *Mary of the Arches* in the ward of *Cheape*, by his certain writing obligatory, sealed with the seal of him the said *David*, and now here shewn to the court of the said lord the king, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the aforesaid *Josiah* in the aforesaid 600*l.* to be paid to him the said *Josiah* when he should be thereunto requested: nevertheless the aforesaid

Debt upon a bond.

David, although often requested, &c. hath not yet paid the aforesaid 600*l.* to the aforesaid *Josiah*, but hath hitherto altogether denied, and as yet doth deny to pay the same to him, to the damage of him the said *Josiah* of 100*l.* and thereupon he brings suit, &c.

Imparance.

And now at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, until which day the aforesaid *David* had leave to imparl to the bill aforesaid, and then to answer, &c. before the lord the king at *Westminster* come as well the aforesaid *Josiah* by his attorney aforesaid as the aforesaid *David* by *John Green* his attorney; and the said *David* defends the force and injury when, &c. and prays *oyer* of the writing obligatory aforesaid; and it is read to him, &c. He also prays *oyer* of the condition of the same writing obligatory aforesaid, and it is read to him in these words, (to wit) The condition of this obligation is such, That if the above-bounden *David Dubarry*, for and on the behalf of *Jacob Derutter* of *Hamborough* merchant, his executors and administrators, do and shall well and truly stand to, obey, abide, observe, perform, fulfil and keep the award, arbitrament, order, final end, determination and judgment of *Maurice Williams*, *Nicholas Cutler* and *Michael Milford* of *London* merchants, or any two of them, arbitrators, as well on the part and behalf of the above named *Josiah Bacon*, as of the said *David Dubarry*, and by their mutual assents and consents indifferently elected, named and chosen to arbitrate, award, order, judge, determine, and a final end to make, of, for, upon and concerning all, and all manner of action and actions, cause and causes of action, suits, debts, accounts, reckonings, sum and sums of money, covenants, contracts, promises, trespasses, damages, bonds, bills, specialties, judgments, extents, executions, strifes, differences, controversies, matters, claims and demands whatsoever, as now are, or at any time before the date above written, have been moved, stirred up or depending between the said *David Dubarry* as attorney to the said *Jacob Derutter* of the one part, and the said *Josiah Bacon* of the other part, for, touching and concerning certain accounts between the said *Josiah Bacon* and the said *Jacob Derutter*, so as the said award, arbitrament, order, final end, and determination and judgment of the said arbitrators, or any two of them, of and upon the premisses, be made and set down in writing, indented under their hands and seals, and be delivered, or ready to be delivered up unto the said parties, respectively in difference, requiring the same at or in the now dwelling-house of *John Chambers* scrivener, situate in *Lombard-street London*, on or before

Oyer of arbitration bond and condition.

before the one and twentieth day of this instant *November*, then this obligation to be void, or else to stand in full force and virtue; which being read and heard, he the said *David Dubarry* saith that the aforesaid *Josiah Bacon* ought not to have or maintain his aforesaid action thereupon against him, because he saith that the aforesaid *Maurice Williams*, *Nicholas Cutler* and *Michael Milford*, in the condition aforesaid named, or two of them, did not make any award in writing indented under their hands and seals, of, for and concerning the premisses aforesaid in the condition aforesaid above specified upon or before the one and twentieth day of *November* in the condition aforesaid mentioned, according to the form and effect of the condition aforesaid; and this he is ready to verify: whereupon he prays judgment if the aforesaid *Josiah Bacon* ought to have or maintain his aforesaid action against him, &c.

Plea that the arbitrators made no award.

And the aforesaid *Josiah Bacon* saith that he by any thing by the aforesaid *David Dubarry* above in pleading alledged ought not to be barred from having his action aforesaid thereupon, because he saith that after the making the writing obligatory aforesaid, to wit, upon the 21st day of *November* in the year of our Lord 1694, in the condition aforesaid specified, at *London* aforesaid in the parish and ward aforesaid, the aforesaid *Nicholas Cutler* and *Michael Milford*, two of the arbitrators in the condition aforesaid above specified, took upon themselves the burthen of arbitrating and ordering of and concerning the premisses in the condition aforesaid above-mentioned, and made their award in writing indented under their hands and seals between the parties, of and concerning the premisses in the condition aforesaid mentioned, by which said award here brought into court they the same arbitrators, reciting that whereas the aforesaid *David*, for and on the behalf of *Jacob Derutter* of *Hamborough* merchant, and the aforesaid *Josiah*, by interchangeable obligations bearing date the 8th day of the then instant *November*, were bound to each other in 600*l.* conditioned to stand to the award of the said *Maurice Williams*, *Nicholas Cutler* and *Michael Milford*, or any two of those arbitrators, mutually between themselves chosen to adjudge, determine, and finally to make an end of, and in all and all manner of action and actions, cause and causes of action, suits, debts, accounts, reckonings, sum and sums of money, covenants, contracts, promises, trespasses, damages, bonds, bills, specialties, judgments, extents, executions, strifes, differences, controversies, matters, claims and demands whatsoever, which then were, or at any time before the date of the writing obligatory aforesaid had been

Plaintiff replies an award.

The award set forth.

moved, stirred up or depending between the said *David Dubarry* (as attorney to the said *Jacob Derutter*) and the said *Josiah Bacon* touching the accounts between the said *Josiah Bacon* and the said *Jacob Derutter*, so that the award and determination of the said arbitrators, or of any two of them, should be made in writing indented under their or any two of their hands and seals, ready to be delivered to the aforesaid parties in difference requiring the same, at or in the then and now dwelling house of *John Chambers* scrivener, situate in *Lombard-street*, upon or before the said one and twentieth day of *November*, as by the said obligations, and the conditions of the same, more fully appears: the said *Nicholas Cutler* and *Michael* did award and order the aforesaid *David Dubarry*, his executors, administrators or assigns, on the part of the aforesaid *Jacob Derutter*, to pay or cause to be paid to the aforesaid *Josiah* his executors, administrators or assigns, the sum of 345 *l.* 6 *s.* 10 *d.* of lawful money of *England*, on or before the 2d day of *January* then next following; and they did further award and order that the aforesaid *Josiah Bacon* and the aforesaid *David Dubarry*, on the behalf of the aforesaid *Jacob Derutter*, upon the payment of the aforesaid sum of money, as before set forth should sign, seal and lawfully execute and deliver to and for the use of each of them, a good and sufficient release of all and all manner of action and actions, cause and causes of action, suits, debts, accounts, reckonings, sum and sums of money, covenants, contracts, promises, trespasses, damages, bonds, bills, specialties, judgments, extents, executions, strifes, differences, controversies, matters, claims and demands whatsoever touching the said accounts, as by the award aforesaid appears. And the said *Josiah* in fact saith, that the award aforesaid in form aforesaid made afterwards, to wit, on the aforesaid one and twentieth day of *November* in the year abovesaid at *London* aforesaid in the parish and ward aforesaid, was delivered as well to the aforesaid *Josiah* as to the aforesaid *David*, according to the form and effect of the condition of the writing obligatory aforesaid. And the said *Josiah* further saith, that although he the said *Josiah*, from the time of making the award aforesaid until this time, hath well and truly observed, performed and kept all and singular the matters and things in the award aforesaid contained on the part of him the said *Josiah* to be performed and fulfilled according to the form and effect of that award; protesting also that the aforesaid *David Dubarry* from the time of making the same award until this time hath not observed, performed or fulfilled the award aforesaid in any thing on his part to be performed and fulfilled,

fulfilled, according to the form and effect of that award, in fact he the said *Josiah* saith, that the aforesaid *David Dubarry* hath not paid or caused to be paid to the aforesaid *Joseph* the aforesaid sum of 345 l. 6 s. 10 d. on or before the aforesaid second day of *January*, which he then ought to have paid to him according to the form and effect of the award aforesaid; and this he is ready to verify: whereupon he prays judgment and his debt aforesaid, together with his damages by occasion of the detention of that debt, to be adjudged to him, &c.

Demurrer, and joinder in demurrer.

N. The judgment was for the defendant, chiefly for this reason, viz. That the submission is on behalf of *Derutter*, and nothing is awarded to *Derutter*, for he has no advantage of this award, because the release is awarded to be made to *Dubarry*, to the use of *Dubarry* so that *Derutter* has no benefit by it.—But *per Curiam*, it had been otherwise if the award had been, that the plaintiff should release to *Derutter*, or to the defendant for the use of *Derutter*, or to the defendant *Dubarry* generally, without saying to the use of *Dubarry*; for then it might have been intended to the use of *Derutter*, because the submission was on behalf of *Derutter*. See the report. And see also the case of *Cayhill* against *Fitzgerald*, Easter 17 Geo. 2. B. R.

Pleas before the Lord the King at Westminster of the Term of Easter in the eighth Year of the Reign of our Lord William the Third, now King of England, &c. Roll 291.

Freeman and others against Bernard and others.
1 Ld. Raym. 247.

London, BE it remembered that heretofore, to wit, in the (to wit) term of Saint Hilary in the sixth year of the reign of our lord William the third, now king of England, &c. before the same lord the king at Westminster came Thomas Freeman and Thomas Haggar by Benjamin Mould their attorney, and brought into the court of the said lord the king then there their certain bill against Samuel Bernard and Thomas Rodbard in the custody of the marshal, &c. of a plea of trespass upon the case, &c. and there are pledges of prosecuting, to wit, John Doe and Richard Roe, which said bill follows in these words (to wit) London, (to wit) Thomas
3 Freeman

Declaration upon an agreement to deliver six bags of hops before 25th of December.

Freeman and Thomas Haggar complain of *Samuel Bernard* and *Thomas Rodbard* being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, for that, to wit, that whereas on the 8th day of *August* in the year of our Lord 1693, at *London* aforesaid, to wit, in the parish of *Saint Mary of the Arches* in the ward of *Cheape*, it was agreed between them the said *Thomas Freeman* and *Thomas Haggar* and the aforesaid *Samuel* and *Thomas Rodbard* in manner and form following, that is to say, that the aforesaid *Samuel Bernard* and *Thomas Rodbard* should deliver to the aforesaid *Thomas Freeman* and *Thomas Haggar* sixteen bags of good new hops of the then next growth, good brewers ware, at thirty and four shillings by the hundred weight, and that they should be delivered on or before the 25th day of *December* then next following; and thereupon in consideration that the aforesaid *Thomas Freeman* and *Thomas Haggar* had paid to the aforesaid *Samuel* and *Thomas Rodbard* one piece of gold coin called a guinea of lawful money of *England* in part of payment thereof, and then and there at the special instance and request of them the said *Samuel* and *Thomas Rodbard* had assumed upon themselves, and to them the said *Samuel* and *Thomas Rodbard* had faithfully promised to perform the agreement aforesaid in all things on the part of them the said *Thomas Freeman* and *Thomas Haggar* to be performed or fulfilled according to the form and effect of the agreement aforesaid, they the said *Samuel* and *Thomas Rodbard* assumed upon themselves and to the aforesaid *Thomas Freeman* and *Thomas Haggar* then and there faithfully promised that they the said *Samuel* and *Thomas Rodbard* would well and faithfully perform and fulfil the agreement aforesaid in all things on the part of them the said *Samuel* and *Thomas Rodbard* to be performed or fulfilled: nevertheless the aforesaid *Samuel* and *Thomas Rodbard* not at all regarding their promise and undertaking aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Thomas Freeman* and *Thomas Haggar* in this behalf, have not delivered the aforesaid sixteen bags of hops, or any parcel thereof on or before the aforesaid 25th day of *December* next following after the making of the agreement aforesaid, or at any time afterwards until this time to them the said *Thomas Freeman* and *Thomas Haggar*, or to either of them, but have hitherto wholly refused, and as yet do refuse to deliver the same to them. And also whereas afterwards, to wit, on the aforesaid 8th day of *August* in the year of our Lord aforesaid at *London* aforesaid in the parish and ward aforesaid, a certain other agreement was had and made in writing between the aforesaid *Samuel* and *Thomas Rodbard* and them

Mutual promise to perform the agreement.

Breach in not delivering the hops.

A 2d count upon another agreement in writing.

the said *Thomas Freeman* and *Thomas Haggar* in form following, that is to say, that the aforefaid *Samuel* and *Thomas Rodbard* should deliver to them the said *Thomas Freeman* and *Thomas Haggar* sixteen other bags of good new hops of the then next growth, good brewers ware, at the rate of 34 s. by the hundred, and that they should be delivered upon or before the 25th day of *December* then next following, which said written agreement was left in the hands of one *Thomas Ruck*. And whereas afterwards, to wit, on the same 8th day of *August* in the year abovefaid at *London* aforefaid in the parish and ward aforefaid, a certain discourse was had and moved between the aforefaid *Samuel* and *Thomas Rodbard* and them the said *Thomas Freeman* and *Thomas Haggar* of and concerning the agreement aforefaid last mentioned, and of and concerning the delivery of two loads of hops to them the said *Thomas Freeman* and *Thomas Haggar* to be made by the aforefaid *Samuel* and *Thomas Rodbard*, and upon that discourse between the aforefaid *Samuel* and *Thomas Rodbard* and them the said *Thomas Freeman* and *Thomas Haggar*, two other loads of hops were to be delivered according to the said agreement so as afore set forth left in the hands of the aforefaid *Thomas Ruck*, and that they the said *Thomas Freeman* and *Thomas Haggar* should accept the hops aforefaid last mentioned according to the aforefaid agreement last before recited; and thereupon in consideration that they the said *Thomas Freeman* and *Thomas Haggar* then and there at the special instance and request of the aforefaid *Samuel* and *Thomas Rodbard* had paid to the aforefaid *Samuel* and *Thomas Rodbard* one other piece of gold coin called a guinea, of lawful money of *England*, in part of payment for the same hops last mentioned, and had assumed upon themselves, and to them the said *Samuel* and *Thomas Rodbard* then and there faithfully promised to perform the agreement aforefaid in all things on the part of them the said *Thomas Freeman* and *Thomas Haggar* to be performed and fulfilled according to the form and effect of the agreement aforefaid last mentioned, they the said *Samuel* and *Thomas Rodbard* assumed upon themselves, and to them the said *Thomas Freeman* and *Thomas Haggar* then and there faithfully promised that they the said *Samuel* and *Thomas Rodbard* would well and faithfully perform and fulfil the agreement aforefaid last mentioned in all things on the part of them the said *Samuel* and *Thomas Rodbard* to be performed and fulfilled: nevertheless the aforefaid *Samuel* and *Thomas Rodbard* not at all regarding their promises and undertakings aforefaid last mentioned made in form aforefaid, but contriving and fraudulently intending craftily and sub-
Thomas

A colloquium
touching the
agreement.

Mutual pro-
mises.

Breach.

Thomas Haggar in this behalf, have not delivered, nor hath either of them delivered the aforesaid two loads of hops last mentioned, or any parcel thereof, to them the said *Thomas Freeman* and *Thomas Haggar*, or to either of them, on or before the aforesaid 25th day of *December* next following after the making the promise and undertaking aforesaid last mentioned, or at any time afterwards, but have hitherto altogether refused, and as yet do refuse to deliver the same to them, whereupon they the said *Thomas Freeman* and *Thomas Haggar* say that they are injured, and have sustained damage to the value of 200*l.* and thereupon they bring suit, &c.

Imparlarice.

And now at this day, to wit, *Wednesday* next after fifteen days of *Easter*, until which day the aforesaid *Samuel* and *Thomas Rodbard* had leave to imparl to the bill aforesaid, and then to answer, &c. before the lord the king at *Westminster* come as well the aforesaid *Thomas Freeman* and *Thomas Haggar* by their attorney aforesaid as the aforesaid *Samuel* and *Thomas Rodbard* by *John Bernard* their attorney; and they the said *Samuel* and *Thomas Rodbard* defend the force and injury when, &c. and say that the aforesaid *Thomas Freeman* and *Thomas Haggar* ought not to have or maintain their action aforesaid thereupon against them, because they say that after the making of the several promises and undertakings above in the declaration aforesaid specified, to wit, on the second day of *November* in the year of our Lord 1694, at *London* aforesaid, to wit, at the parish of the blessed *Mary of the Arches* in the ward of *Cheape* aforesaid, as well the aforesaid *Thomas Freeman* and *Thomas Haggar*, as the aforesaid *Samuel* and *Thomas Rodbard* did submit and put themselves to the award, order and judgment of Sir *John Parsons*, knt. and *Richard Hammond* brewers, arbitrators as well on the part of the aforesaid *Thomas Freeman* and *Thomas Haggar*, as on the part of them the said *Samuel* and *Thomas Rodbard* indifferently named and chosen to arbitrate, order, adjudge and determine of and upon and concerning all and all manner of action and actions, cause and causes of action, suits, debts, bonds, bills, specialties, executions, accounts, sum and sums of money, differences, controversies, trespasses, damages, claims and demands whatsoever at any time before then had, moved, commenced, prosecuted, done, promised, committed or depending in suit, controversy, question or demand by or between the aforesaid *Thomas Freeman* and *Thomas Haggar* and the aforesaid *Samuel* and *Thomas Rodbard*, for or by reason of any matter, cause or thing whatsoever, so that the aforesaid arbitrators should make and give their award and determination of and concerning the premisses in writing indented under their hands and seals, ready to be delivered to the aforesaid

A submission
to an award
pleaded in bar.

aforesaid *Thomas Freeman* and *Thomas Haggar*, *Samuel* and *Thomas Rodbard*, or to either or any of them at or in the mansion-house of *Tobias Winne* scrivener, in the street called *Bartholomew Lane* near the *Royal Exchange London*, before the first day of *December* then next following. And that afterwards, to wit, on the 29th day of *November* in the year of our Lord 1694, abovesaid at the mansion-house of the aforesaid *Tobias Winne* in the street called *Bartholomew Lane* aforesaid, near the *Royal Exchange London*, to wit, in the parish of *Saint Bartholomew Exchange* in the ward of *Broad-street, London*, the aforesaid *John Parsons* and *Richard Hammond* the arbitrators aforesaid, having taken upon themselves the burthen of the arbitration aforesaid by a certain writing indented under the hands and seals of those arbitrators, and ready to be delivered to the aforesaid *Thomas Freeman* and *Thomas Haggar*, *Samuel* and *Thomas Rodbard*, or to either or any of them, did arbitrate, make and give their award and determination of and concerning the premises, that the aforesaid *Samuel* and *Thomas Rodbard*, and also the aforesaid *Thomas Freeman* and *Thomas Haggar*, or the several respective executors and administrators of the aforesaid *Samuel* and *Thomas Rodbard*, *Thomas Freeman* and *Thomas Haggar* should mutually sign and seal, and as their act and deed should deliver to and for the use of each other, their executors or administrators respectively, full and sufficient general releases and discharges of all actions, suits, accounts, debts and demands whatsoever in law or equity of or concerning the premises to the said arbitrators, as before set forth, in any manner submitted. And the aforesaid *Samuel* and *Thomas Rodbard* say that they, from the time of making the said award until this time, were always and still are ready to sign, seal, and as their acts and deeds to deliver to them the said *Thomas Freeman* and *Thomas Haggar* such releases and discharges as by the aforesaid arbitrators are above awarded, if the aforesaid *Thomas Freeman* and *Thomas Haggar* should or would be willing to accept those releases and discharges of the aforesaid *Samuel* and *Thomas Rodbard*; and this they are ready to verify: whereupon they the said *Samuel* and *Thomas Rodbard* pray judgment if the aforesaid *Thomas Freeman* and *Thomas Haggar* ought to have or maintain their action aforesaid thereupon against them, &c.

To this the plaintiffs demurred, and defendants join in demurrer.

N: B. This award of mutual releases was held bad, because there was no satisfaction awarded; and the award has only ordered a means to discharge the action. See the Report of the Case.

Pleas

Pleas before our Lord the King at Westminster of the Term of the Holy Trinity in the ninth Year of the Reign of our Lord William the Third, now King of England, &c. Roll 359.

Tuberville against Stamp. 1 Ld. Raym. 264.

Declaration on the custom of the realm for negligently keeping a fire in the defendant's close, whereby the plaintiff's heath and furze were burnt.

Dorsetshire, **BE** it remembered that heretofore, to wit, in (to wit.) the term of *Easter* last past before our lord the king at *Westminster* came *Thomas Tuberville* the younger esq; by *Edward Lawrence* his attorney, and brought into the court of the said lord the king then there his certain bill against *John Stamp* gent. in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill followeth in these words, to wit, *Dorsetshire*, to wit, *Thomas Tuberville* the younger esq; complains of *John Stamp* gent. being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, for that, to wit, that whereas according to the law and custom of this realm of *England* hitherto used and approved every man of the same realm is bound to keep his fire safely and securely by day and by night, left for want of the due keeping of such fire any damage in any manner happen to any person of the same realm: and whereas the said *Thomas* on the 6th day of *April* in the 9th year of the reign of our lord *William* the third now king of *England*, &c. was possessed of a certain close of heath lying and being in the parish of *Stoke* in the county aforesaid; and also whereas the said *John* the same day and year aforesaid was likewise possessed of a certain other close of heath next adjoining to the aforesaid close of him the said *Thomas* in the parish and county aforesaid, the said *John* on the day and year and at the place aforesaid so negligently and improvidently kept his fire in the said close of heath of him the said *John*, that for want of the due keeping of the said fire the heath and furzes of him the said *Thomas* to the value of forty pounds in the said close of heath of him the said *Thomas* then growing and being were burnt, to the great damage of him the said *Thomas*, and contrary to the custom aforesaid; whereupon he saith that he is injured, and hath sustained damage to the value of 40*l.* and thereupon he brings suit, &c.

And

And now here at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, until which day the said *John* had leave to imparl to the said bill and then to answer, &c. before the lord the king at *Westminster* comes as well the said *Thomas* by his attorney aforesaid as the said *John* by *Samuel Brewster* his attorney; and the said *John* defends the force and injury when, &c. and saith that he is not guilty thereof; and of this he puts himself upon the country, and the aforesaid *Thomas* likewise, &c. Therefore let a jury thereupon come before the lord the king at *Westminster* on *Wednesday* next after three weeks of the Holy *Trinity*, and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the said parties there, &c. Afterwards the process being thereupon continued between the said parties of the plea aforesaid by the jury being thereupon respited between them before the lord the king at *Westminster* until *Saturday* next after three weeks of Saint *Michael* from thence next following, unless the justices of the lord the king, assigned to take the assises in the county of *Dorset* on *Thursday* the 22d day of *July* at *Dorchester* in the county aforesaid by form of the statute, &c. should before come for default of jurors, &c. At which day before the lord the king at *Westminster* cometh the said *Thomas Tuberville* the younger by his attorney aforesaid, and the aforesaid justices before whom, &c. have sent here their record before them had in these words, to wit, Afterwards on the day and at the place within contained, before *Edward Ward*, knt. chief baron of the exchequer of the lord the king, and *Thomas Rokeby*, knt. one of the justices of the lord the king assigned to hold pleas before the king himself, justices of him the said lord the king assigned to take the assises in the county of *Dorset* by form of the statute, &c. came the within named *Thomas Tuberville* the younger by his attorney within contained, and the within written *John Stamp* gent. although solemnly required did not come, but made default: therefore let the jury, whereof mention is within made, be taken against him by default: and the jurors of that jury being called, some of them, to wit, *Thomas Notting*, *Henry Kelloway*, *Richard Hambourne*, *John Ford*, *David Howard*, *Mark Dowland*, *Henry Humber*, *James Squib*, *Robert Woolfrays* came, and are sworn upon that jury; and because the rest of the jurors of the same jury did not appear, therefore others of the by-standers by the sheriff of the county aforesaid being chosen for this purpose at the request of the said *Thomas Tuberville*, and by the command of the justices aforesaid are newly appointed, whose names are

Imparlanee.

Plea, not guilty.

Venire facias
awarded.

Nisi prius.

Postea.

Tales.

are

Final judgment.

Mercy,

are affiled in the panel within written according to the form of the statute in such case lately made and provided: and the jurors newly appointed, to wit, *John Warren*, *William Bussel* and *Nathaniel Payne* being callrd likewise came, who being chosen, tried and sworn together with the other jurors aforesaid before for this purpose impanelled and sworn to speak the truth concerning the matter within contained say upon their oath, that the aforesaid *John Stamp* is guilty of the premisses within written within laid to his charge, as the said *Thomas Tuberville* within thereof complains against him; and they assess the damages of him the said *Thomas* by the occasion within written, besides his costs and charges by him laid out about his suit in this behalf, to eighteen pounds, and for those costs and charges to forty shillings: therefore it is considered that the aforesaid *Thomas Tuberville* do recover against the said *John Stamp* his damages aforesaid by the jury aforesaid in form aforesaid assessed, and also eleven pounds for his costs and charges to him the said *Thomas Tuberville* by the court of the said lord the king now here with his assent adjudged of increafe; which said damages in the whole in themselves amount to thirty-one pounds, and the aforesaid *John* in mercy, &c.

Pleas inrolled before Sir George Treby, Knt. and his Companions Justices of our Lord the King and Lady the Queen, of the Term of Saint Michael in the sixth Year of the Reign of the said Lord the King and Lady the Queen by the Grace of God of England, &c.

Error. C. B. *Quare Impedit*. Rolls 705, 706.

The King and Queen against the Bishop of Chester,
Piers and Scrope. 1 *Ld. Raym.* 292.

Yorkshire, **N**ICHOLAS bishop of Chester, Richard (to wit) Piers, esq; and Richard Scrope, clerk, were summoned to answer to the lord and lady the now king and

and queen of a plea that they permit them the said king and queen to present a fit person to the church of *Bedall* which is void and belongs to their gift, &c. And whereupon Sir *Edward Ward* knt. attorney-general of the said lord and lady the now king and queen, who sues in this behalf for the same lord and lady the king and queen, saith for the same lord and lady the king and queen, that the lady *Elizabeth* late queen of *England* was seised of the advowson of the church aforesaid, as of an advowson in gross by itself, as of fee and right, in right of her crown of *England*; and being so seised thereof, by her letters patent sealed under her great seal of *England*, bearing date at *Westminster* in the county of *Middlesex* the 14th day of *February* in the 12th year of the reign of the same late queen, presented one *John Tyns* her clerk to that church being void, as by the record of the inrolment of the said letters patent remaining in the court of chancery of our said lord and lady the now king and queen at *Westminster* aforesaid more fully appears; which said *John Tyns* upon the aforesaid presentation of the aforesaid late queen was admitted, instituted and inducted in the same, in the time of peace in the time of the said late queen; and the aforesaid late queen being seised of the advowson of the church aforesaid as before is set forth, she the said late queen afterwards at *Westminster* aforesaid died seised of such her estate of and in the advowson of the church aforesaid as before is set forth; after the death of which said late queen the advowson of the church aforesaid descended to *James* the first late king of *England*, by which the aforesaid late king *James* the first was seised of the advowson of the church aforesaid, as of an advowson in gross by itself, as of fee and right, in right of his crown of *England*; and being so seised thereof, the church aforesaid became void by the death of the aforesaid *John Tyns*, by which he the said late king *James* the first by his letters patent sealed under his great seal of *England* bearing date at *Westminster* aforesaid the 13th day of *July* in the 19th year of the reign of the same late king *James* the first of *England*, &c. presented one *John Wilson* doctor of divinity his clerk, to that church so being void, as by the record of the inrolment of the said letters patent last mentioned in the aforesaid court of chancery of the said lord and lady the now king and queen at *Westminster* aforesaid remaining more fully appears; which said *John Wilson* upon the presentation of the aforesaid late king *James* the first was admitted, instituted and inducted in the same, in the time of peace in the time of the said late king *James* the first; and the aforesaid late king *James* the

Queen *Elin.*
seised in fee of
the advowson
in gross of the
church of *Bedall*.

14th of *February*
in the 12th
year of her
reign presented
Tyns by her
letters patent,

who was admitted, &c.

The queen died
seised of the advowson, which
descended to
James 1.

who was seised
in fee.

The church became void by
the death of
Tyns.

James the 1st
presented *John Wilson* 13th of
July Anno 19^o
Regni,

who was admitted, &c.

the

James the 1st
died seised and
the advowson
descended to
Charles 1.

The church be-
came void by
the death of
Wilson.

Charles 1st pre-
sented Dr.
Wickham,

who was ad-
mitted, &c.

The church be-
came void by
the death of Dr.
Wickham, John
Piers, presented
Metcalf by
usurpation,
who was ad-
mitted, &c.

Charles 1st died
seised, and the
advowson de-
scended to
Charles 2d.

The church be-
came void by
the death of
Metcalf.

the first being seised of the advowson of the church aforesaid as before is set forth, the same late king afterwards at *Westminster* aforesaid died seised of such his estate thereof, after the death of which said late king *James* the first the advowson of the church aforesaid descended to *Charles* the first late king of *England* as son and heir of the late king *James* the first, by which the aforesaid late king *Charles* the first was seised of the advowson of the church aforesaid as of an advowson in gross by itself as of fee and right in right of his crown of *England*; and being so seised thereof, the church aforesaid became void by the death of the aforesaid *John Wilson*, by which the same late king *Charles* the first by his letters patent sealed under his great seal of *England* bearing date at *Westminster* the sixth day of *March* in the tenth year of the reign of the same late king *Charles* the first presented one *Henry Wickham* doctor of divinity his clerk, to that church so being void, as by the record of the inrolment of the said letters patent last mentioned in the aforesaid court of chancery of the said lord and lady the now king and queen at *Westminster* remaining more full appears; which said *Henry Wickham* upon the aforesaid presentation of the aforesaid late king *Charles* the first was admitted, instituted and inducted in the same in the time of peace in the time of the said late king *Charles* the first; and the aforesaid late king *Charles* the first being seised of the advowson of the church aforesaid as before is set forth, the church aforesaid became void by the death of the aforesaid *Henry Wickham*, and that one *John Piers* esq; to the same church so being void, not having the right of presenting to the same, but by usurping upon the late lord king *Charles* the first, presented one *William Metcalf* his clerk, who upon the presentation of the aforesaid *John Piers* was admitted, instituted and inducted in the same; and afterwards the aforesaid late king *Charles* the first being seised of the advowson of the church aforesaid as before is set forth, at *Westminster* aforesaid died seised of such his estate thereof as before is set forth; after whose death the advowson of the church aforesaid descended to *Charles* the second late king of *England* as son and heir of the aforesaid late king *Charles* the first, by which the aforesaid late king *Charles* the second was seised of the advowson of the church aforesaid, as of an advowson in gross by itself as of fee and right in right of his crown of *England*; and being so seised thereof, the church aforesaid became void by the death of the aforesaid *William Metcalf*, by which the aforesaid late king *Charles* the second by his letters patent sealed under his great seal of *England* bearing date at *Westminster*

Westminster the 28th day of *August* in the 12th year of the reign of the same late king *Charles* the second presented one *Peter Samways* doctor of divinity his clerk, to that church so being void, as by the record of the inrolment of the said letters patent last mentioned in the aforesaid court of chancery of the said lord and lady the now king and queen at *Westminster* aforesaid remaining more fully appears; which said *Peter Samways* upon the aforesaid presentation of the aforesaid late king *Charles* the second was admitted, instituted and inducted in the same, in the time of peace in the time of the said late king *Charles* the second; and the aforesaid late king *Charles* the second being seised of the advowson of the church aforesaid as before is set forth, he the said late king *Charles* the second afterwards at *Westminster* aforesaid died seised of such his estate thereof, after whose death the advowson of the church aforesaid descended to *James* the second late king of *England* as brother and heir of the aforesaid late king *Charles* the second, by which the aforesaid late king *James* the second was seised of the advowson of the church aforesaid as of an advowson in gross by itself as of fee and right in right of his crown of *England*; which said late king *James* the second being seised of the advowson aforesaid as before is set forth, abdicated himself from the government of this kingdom, by which the advowson aforesaid came [devolved] to them the said lord and lady the now king and queen, whereby they the said lord and lady the now king and queen were and as yet are seised of the advowson of the church aforesaid as of an advowson in gross by itself as of fee and right in right of their crown of *England*; and being so seised thereof, the church aforesaid became void by the death of the aforesaid *Peter Samways*, whereupon it belongs to the aforesaid lord and lady the now king and queen to present a fit person to the church aforesaid being so void; and the aforesaid bishop, *Richard Piers* and *Richard Scrope* unjustly hinder them, whereupon the said attorney-general saith for the said lord and lady the now king and queen that they the said king and queen are injured, and have sustained damage to the value of 100 £ and thereupon the said attorney-general who sues, &c. in this behalf as aforesaid brings suit, &c.

Charles 2d presented Dr. *Samways*,

who was admitted, &c.

Charles 2d died seised, and the advowson descended to *James* 2d.

James 2d being seised abdicated the realm,

by which the advowson came to the now king and queen, who are now seised thereof. And the church became void by the death of *Samways*, whereupon it belongs to the king and queen to present.

Entered

Entered of Trinity Term in the 10th Year of King William the Third. B. R. Roll 102.

Pullein Esq; against Benson. 1 Ld. Raym. 349.

Debt upon a
bail bond.

Yorkshire, **B**E it remembered that heretofore, to wit; in (to wit) the term of *Easter* last past before the lord the king at *Westminster* came *Thomas Pullein* esq; late sheriff of the county aforesaid by *Charles Sanderson* his attorney, and brought into the court of the said lord the king then there his certain bill against *John Benson*, otherwise called *John Benson* of the same yeoman, in custody of the marshal, &c. of a plea of debt; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, (to wit) *Yorkshire*, (to wit) *Thomas Pullein* esq; late sheriff of the county aforesaid complains of *John Benson*, otherwise called *John Benson* of the same yeoman, being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, of a plea that he render to him forty pounds which he oweth to him and unjustly detains, for that, to wit, That whereas the aforesaid *John* on the 20th day of *November* in the 9th year of the reign of the lord *William* the third now king of *England*, &c. at *Barnsley* in the county aforesaid, by his certain writing obligatory sealed with the seal of him the said *John*, and to the court of the said lord the king now here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to him the said *Thomas*, by the name of *Thomas Pullein* esq; sheriff of the county aforesaid in the aforesaid 40*l.* to be paid to him the said *Thomas* when he should be thereunto requested: nevertheless the aforesaid *John*, although often requested, &c. hath not yet paid to him the said *Thomas Pullein* the aforesaid 40*l.* but to pay the same to him hath hitherto altogether denied, and as yet doth deny, to the damage of him the said *Thomas Pullein* of ten pounds, and thereupon he brings suit, &c.

Imparance.

And now at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, until which day the aforesaid *John* had leave to imparl to the bill aforesaid and then to answer, &c. before the lord the king at *Westminster*

minster cometh as well the aforesaid *Thomas* by his attorney aforesaid as the aforesaid *John* by *William Manlove* his attorney; and the said *John* defends the force and injury when, &c. and prays *oyer* of the writing aforesaid, and it is read to him, &c. he also prays *oyer* of the condition of the said writing, and it is read to him in these words, (to wit) The condition of this obligation is such, that if the above bounden *William Benson* do appear before the lord the king at *Westminster* on *Monday* next after fifteen days of Saint *Martin* to answer to *John Brooke* gent. of a certain plea of trespass, and also to a bill of him the said *John* against the aforesaid *William* for twelve pounds of debt, that then this present obligation shall be void, or else shall stand and remain in its full strength, force and virtue; which being read and heard, he the said *John* saith that he ought not to be charged with the debt aforesaid by virtue of the aforesaid writing, because he says that by a certain act made in the parliament of *Henry* the sixth late king of *England*, holden at *Westminster* in the county of *Middlesex*, on the 25th day of *February* in the 23d year of his reign, of the consideration of the king concerning the great perjuries, extortions and oppressions which were, and had been, in this realm by his sheriffs, undersheriffs, and their clerks, coroners, stewards of franchises, bailiffs, and keepers of prisons, and other officers in divers counties of this realm, it is ordained and was enacted by the authority of the same parliament, (among other things) that the said sheriffs, and all other officers and ministers aforesaid, should let out of prison all manner of persons by them or any of them arrested, or being in their custody by force of any writ, bill or warrant, in an action personal, or by cause of indictment of trespasses, upon reasonable surety of sufficient persons, having sufficient within the counties where such persons should be so let to bail, or mainprise, to keep their days in such places as the said writs, bills or warrants should require, (such person or persons which were or should be in their ward by condemnation, execution, *capias utlagatum*, or excommunication, surety of the peace, and all such persons as were or should be committed to ward by special commandment of any justices, and vagabonds refusing to serve according to the form of the statute of labourers only except) and that no sheriff, nor any of the officers or ministers aforesaid should take, or cause to be taken, or make any obligation for any cause aforesaid, or by colour of their office, but only to themselves, of any person, nor by any person which should be in their ward by the course of the law, but by the name of their office, and upon condition

Oyer of the
bond.

The St. of
23 Hen. 6.
c. 10. pleaded.

Averment that
the bail bond
was executed
after the return
of the writ and
not before.

written, that the said prisoners should appear at the day in the said writ, bill or warrant, and in such places as the said writs, bills or warrants should require; and if any of the said sheriffs or other officers or ministers aforesaid should take any obligation in other form by colour of their offices, that it should be void, as by the same act among other things more fully appears. And the said *John* further saith that the writing aforesaid was first delivered by him the said *John* on the 30th day of *November* in the ninth year aforesaid; and that the aforesaid *William Benson* in the condition aforesaid above named at the said time of the delivery and making of that writing at *Barnsley* aforesaid was in ward of the aforesaid *Thomas* as sheriff of the aforesaid county of *York*, being taken and arrested by him the said *Thomas* by pretext of a certain writ of the lord the king directed to him the said sheriff, and returnable before the lord the king at *Westminster* upon a certain day of the term of Saint *Michael* then last past, and he the said *William Benson* being so in ward of the said *Thomas* as before is set forth, he the said *Thomas* on the said 30th day of *November* in the ninth year aforesaid and not before, took the writing obligatory aforesaid with the condition aforesaid, by colour of his office of sheriff of the county aforesaid, of the said *William Benson*, and of him the said *John* as his surety, contrary to the form of the statute aforesaid, to wit, at *Barnsley* aforesaid, and so that writing by force of the said statute was, and is void and of no effect in law; * and this he is ready to verify: whereupon he prays judgment if he ought to be charged with the debt aforesaid by virtue of the writing aforesaid, &c.

L. Agar.

Demurrer.

And the aforesaid *Thomas* saith that he by any thing by the aforesaid *John Benson* above in pleading alledged ought not to be barred from having his said action thereupon against him the said *John*, because he saith that the plea aforesaid by him the said *John* in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to bar him the said *Thomas* from having his action aforesaid

* *N. B.* The plaintiff declared on a bond dated the 20th of *November*; the defendant says it was first delivered by him on the 30th of *November*, and not before; he ought to have concluded with a traverse in this manner, viz. "Without this, that the aforesaid writing was delivered by him the said *John* on the 20th day of *November* in the ninth year aforesaid, as the aforesaid *Thomas* above declares against him, or at any time before the said 30th day of *November* in the year aforesaid; and this he is ready to verify, &c." And for want of this traverse the court held the plea ill, and gave judgment for the plaintiff. See the report.

thereupon

thereupon against the aforesaid *John*; to which said plea he the said *Thomas* hath no necessity, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient answer in this behalf, he the said *Thomas* prays judgment and his debt aforesaid, together with his damages by occasion of the detention of that debt, to be adjudged to him; and for cause of demurrer in law upon that plea, he the said *Thomas* according to the form of the statute in such case lately made and provided, shews and demonstrates to the court here these causes following, (that is to say) that the plea aforesaid is uncertain, double, and wants form, and doth not answer the declaration of the aforesaid *Thomas*.

E. Northey.

And the aforesaid *John* saith that the plea aforesaid by him the said *John* in manner and form aforesaid above pleaded, and the matter therein contained, are good and sufficient in law to bar him the said *Thomas* from having his said action thereupon against the aforesaid *John*; which said plea, and the matter therein contained, he the said *John* is ready to verify and prove, as the court, &c. And because the said *Thomas* doth not answer to that plea, nor hath hitherto in any manner denied it, he the said *John* as before prays judgment if he ought to be charged with the debt aforesaid by virtue of the writing aforesaid, &c. But because the court of the said lord the king now here is not yet advised of giving their judgment of and upon the premisses, day thereupon is given to the parties aforesaid before the lord the king at *Westminster* until ——— next after ——— for bearing their judgment of and upon the premisses, for that the court of the said lord the king now here thereupon are not yet, &c.

Joinder in demurrer.

Curia advisare vult.

Pleas before our Lord the King at Westminster of the Term of the Holy Trinity in the tenth Year of the Reign of our Lord William the Third, now King of England, &c. Roll 763.

Johnson against Long. 1 Ld. Raym. 370.

Somersetshire, BE it remembered that heretofore, to wit, (to wit.) B in the term of Saint Michael last past before the lord the king at *Westminster* came *Timothy Johnson* by *Philip*
S 2

Declaration in
case for a nu-
sance.

Possession al-
leged of a
workhouse
wherein was a
window time
out of mind.

That defendant
is possessed of a
parcel of land
contiguous to
the workhouse,

and built a wall
there which
stopped the
light and air
from entering
into the said
workhouse
through the
window,

whereby plain-
tiff lost the
profit of his said
workhouse.

Philip Hodges his attorney, and brought into the court of our said lord the king then there his certain bill against *John Long* in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill followeth in these words, (to wit,) *Somersetshire*, (to wit,) *Timothy Johnson* complains of *John Long*, being in the custody of the marshal of the *Marshalsea* of the lord the now king before the king himself, for that, to wit, that whereas the said *Timothy* on the 21st day of *April* in the eighth year of the reign of our lord *William* the third now king of *England*, &c. and always afterwards until this time hath been possessed, and as yet is possessed of a certain ancient workhouse, situate and being in the parish of *Whatley* in the county aforesaid, in which said workhouse on the same 21st day of *April* in the eighth year aforesaid there was and from time whereof the memory of man is not to the contrary there hath been a certain ancient window in the west part of the same workhouse, through which a very wholesome air and chearing light on the same 21st day of *April* in the eighth year aforesaid and for all the time aforesaid entered and were brought in, and used and were accustomed to enter and be brought in, to the great profit and advantage of the occupiers of the said workhouse: and whereas the said *John* on the 21st day of *April* in the eighth year aforesaid and always afterwards until this time hath been possessed, and as yet is possessed of a certain parcel of land with the appurtenances situate, lying and being in the parish of *Whatley* aforesaid in the county aforesaid lying contiguous to the workhouse aforesaid; and being so possessed thereof, he the said *John* contriving and fraudulently intending very much to aggrrieve and oppress the said *Timothy*, and wholly to deprive him the said *Timothy* of the air and light which used and were accustomed to enter and be brought in through the window aforesaid into the said shop, and to stop up the workhouse aforesaid in horrid darkness, and wholly to deprive the said *Timothy* of the use and profit of the said workhouse, on the 21st day of *April* in the eighth year aforesaid at *Whatley* aforesaid in the county aforesaid newly erected and built a certain wall upon the said parcel of land of him the said *John* so near to the said workhouse that by the same erection of the wall aforesaid the said window on the said 21st day of *April* and always afterwards until the day of exhibiting this bill, to wit, the 23d day of *October* in the ninth year of the reign of our said lord the now king was very much stopped up and darkened, whereby the said *Timothy* hath totally lost and been deprived of the whole profit and easement of the said window,

window, and the comfort and wholesomeness of the air and light which used to enter and be brought in and upon the same window as before is set forth, and the whole use and profit of the said workhouse from the said 21st day of *April* in the eighth year above said until the said 23d day of *October* in the ninth year above said; whereupon the said *Timothy* saith that he is injured, and hath sustained damage to the value of forty pounds, and thereupon he brings suit; &c.

And now at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, until which day the said *John Long* had leave to imparl to the said bill and then to answer, &c. before our lord the king at *Westminster* comes as well the said *Timothy* by his attorney aforesaid as the said *John* by *James Long* his attorney; and the said *John* defends the force and injury when, &c. and saith that the said *Timothy* ought not to have or maintain his said action thereupon against him, because he saith that the aforesaid *Timothy* heretofore, to wit, in the term of *Easter* in the eighth year of the reign of our lord the now king in the court of him the said lord the king before the king himself here, to wit, at *Westminster* in the county of *Middlesex* impleaded the same *John Long* in a certain plea of trespass upon the case, declaring against him, that whereas he the said *Timothy* on the tenth day of *October* in the seventh year of the reign of our lord the now king, and always afterwards until that time had been and then was possessed of a certain ancient workhouse situate and being in the parish of *Whatley* in the county aforesaid, and that in that workhouse on the same tenth day of *October* in the seventh year above said, and from time whereof the memory of man was not then to the contrary, there was a certain ancient window in the west part of the said workhouse, and that through the same window a very wholesome air and chearing light on the same tenth day of *October* in the seventh year above said and for all the time above said entered and were brought in and used and were accustomed to enter and be brought in, to the great profit and advantage of the occupiers of the said workhouse: and that the said *John* on the said tenth day of *October* in the seventh year above said and always afterwards until that time had been possessed and then was possessed of a certain parcel of land with the appurtenances situate, lying and being in the parish of *Whatley* aforesaid in the county aforesaid, lying contiguous to the workhouse aforesaid; and being so possessed thereof, he the said *John* contriving and fraudulently intending very much to aggrieve and oppress the said *Timothy*, and wholly to deprive him the said *Timothy* of the air and light which used and were accustomed

Imparlanee.

Plea in bar that plaintiff hath recovered in another action for the very same nuisance,

accustomed to enter and be brought in through the window aforesaid into the said workhouse, and to stop up the workhouse aforesaid in horrid darkness, and wholly to deprive the said *Timothy* of the use and profit of the said workhouse, on the said tenth day of *October* in the seventh year aforesaid at *Whatley* aforesaid in the county aforesaid newly erected and built a certain wall upon the said parcel of land of him the said *John* so near to the said workhouse that by the same erection of the wall aforesaid the said window on the said tenth day of *October* and always afterwards until the 20th day of *April* in the 8th year of the reign of our lord the now king was very much stopped up and darkened, whereby the said *Timothy* had totally lost and been deprived of the whole profit and easement of the said window, and the comfort and wholesomeness of the air and light which used to enter and be brought in and upon the same window, and the whole use and profit of the said workhouse, from the said tenth day of *October* in the seventh year aforesaid until the said 20th day of *April* in the 8th year aforesaid, whereupon the said *Timothy* then said that he was injured, and had sustained damage to the value of forty pounds, and thereupon he then brought suit, &c. And in such manner it was thereupon proceeded in the same court here, to wit, at *Westminster* aforesaid, (after that he the said *John* had there pleaded thereunto that he was not guilty thereof, and by a certain jury of the country had been found guilty thereof) that afterwards, to wit, in the term of Saint *Michael* then next following it was considered by the same court here that the said *Timothy* should recover against the said *John* fourteen pounds for his damages which he had sustained, as well by occasion of the premises in the same record mentioned, as for his costs and charges by him laid out about his suit in that behalf, as by the record thereof in the same court here, to wit, at *Westminster* aforesaid remaining more fully appears. And the said *John* further saith, that the aforesaid workhouse, window, erection and building of the wall aforesaid in the said recited record mentioned, and the aforesaid workhouse, window, erection and building of the wall aforesaid in the bill of him the said *Timothy* against him the said *John Long* now exhibited above mentioned and expressed, are the same workhouse, window, erection and building of the wall, and not others nor different; and that the aforesaid *Timothy* named plaintiff in the said recited record, and the said *Timothy* the above named plaintiff in the bill aforesaid are one and the same person, and not another nor different; and that the aforesaid *John* named defendant in the said recited record, and the aforesaid *John* the above named defendant in the bill aforesaid are one and the

Judgment in
the former
action.

Averment of
the identity of
the nuisance, &c.

the same person and not another nor different; and this he is ready to verify: whereupon he prays judgment if the aforesaid *Timothy* ought to have or maintain his said action against him, &c.

And the said *Timothy* saith that he by any thing by the said *John* above in pleading alledged ought not to be barred from having his said action thereupon against him the said *John*, because he saith that the plea aforesaid by the said *John* in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to bar him the said *Timothy* from having his action thereupon against the said *John*; to which said plea he the said *Timothy* hath no necessity, neither is he bound by the law of the land in any manner to answer; and this he is ready to verify; wherefore for want of a sufficient answer in this behalf, the said *Timothy* prays judgment and his damages by occasion of the premisses aforesaid to be adjudged to him, &c. Demurrer.

And the aforesaid *John* saith that the said plea of him the said *John* in manner and form aforesaid above pleaded, and the matter therein contained, are good and sufficient in law to bar the said *Timothy* from having his said action thereupon against him the said *John*; which said plea, and the matter therein contained, he the said *John* is ready to verify and prove, as the court, &c. And because the said *Timothy* doth not answer to that plea, nor hath hitherto in any manner denied it, he the said *John* as before prays judgment, and that the said *Timothy* may be barred from having his said action against him the said *John*, &c. but because the said court of the said lord the now king here are not yet advised of giving their judgment of and upon the premisses, day is thereupon given to the parties aforesaid before the lord the king at *Westminster* until *Wednesday* next after eight days of Saint *Martin* to hear their judgment thereupon, for that the court of the said lord the king now here is not yet thereupon, &c. At which day before the lord the king at *Westminster* come the said parties by their attornies aforesaid, whereupon all and singular the premisses being seen, and by the court of the lord the now king more fully understood, and mature deliberation being thereupon had, it seems to the court of the lord the king here that the said plea by the said *John* in manner and form aforesaid above pleaded, and the matter therein contained, are good and sufficient in law to bar him the said *Timothy* from having his said action against the said *John*, therefore it is considered that the said *Timothy* take nothing by his said bill, but that he for his false complaint be thereupon in mercy, &c. And the said Joinder in demurrer.
Clerks advise vult.
Judgment for the defendant.
Mercy.

said *John* may thereupon go without day, &c. And it is further considered that the said *John* do recover against the said *Timothy* six pounds and ten shillings for his costs and charges sustained in and about his defence in this behalf adjudged by the court of the said lord the king now here to him the said *John* by his assent according to the form of the statute in such case made and provided, and that the said *John* have execution thereof, &c.

Entered of Trinity Term in the 9th Year of King William the Third. B. R. Roll 724.

Savill against Roberts. 1 Ld. Raym. 374.

Writ of error.

THE lord the king hath sent to his beloved and faithful *George Treby*, knt. his chief justice of the bench his writ close in these words, (to wit) *William* the third by the grace of God of *England, Scotland, France, and Ireland* king, defender of the faith, &c. To his beloved and faithful *George Treby*, knt. his chief justice of the bench greeting: so much as in the record and process, and also in the giving of judgment of the plaint which was in our court before you and your companions, our justices of the bench aforesaid, by our writ between *James Roberts* and *William Savill* late of *Mexbrough* in the county of *York* esq; of a certain trespass upon the case done by the said *William* to him the said *James*, as it is said, manifest error hath intervened, to the great damage of him the said *William*, as by his complaint we are informed: we willing that the error (if any hath been) be in due manner corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you that if judgment be given thereupon, then that you send to us distinctly and plainly under your seal the record and process aforesaid, with all things touching the same, and this writ, so that we may have them from the day of *Easter* in fifteen days wheresoever we shall then be found in *England*, that inspecting the record and process aforesaid we may cause further to be done thereupon for the correcting that error, that which of right and according to the law and custom of our kingdom of *England* shall be meet to be done. Witness ourself at *Westminster* the 16th day of *February* in the 9th year of our reign,

Hungerford.

The Answer of George Treby, knt. Chief Justice within *The return thereof.*
named.

The record and process of the plaint whereof mention is within made, with all things touching the same, I send before the lord the king wheresoever &c. at the day within contained, in a certain record to this writ annexed, as I am within commanded.

George Treby.

Pleas inrolled at Westminster before George Treby Knt. and his Companions Justices of our Lord the King of the Bench of the term of the Holy Trinity in the 8th Year of the Reign of our Lord William the third by the Grace of God of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. Roll 1737.

Yorkshire, (to wit) William Savill late of Mexbrough in the county aforesaid esq; was attached to answer to James Roberts of a plea of trespass upon the case, &c. And whereupon the said James by Robert Darwent his attorney complains that the afor said William Savill contriving and wickedly and maliciously intending unjustly to aggrieve him the said James, and to weary, oppress and damnify him very much with various labours and expences, by pretence and colour of justice, and process of law, without a reasonable cause, and of his malice aforethought, at Barnsley in the county aforesaid, at the general quarter-session of the peace of the lord the king holden by adjournment there for the west riding in the county aforesaid on the 15th day of October in the 7th year of the reign of the lord the now king, before George Cooke bart. Michael Wentworth, William Lowther knights, Robert Monkton, Godfrey Boswile, Richard Nettleton, John Bradshawe, Nenus Parker esquires, and other justices of the said lord the king assigned to keep the peace in the west riding in the county aforesaid, and also to hear and determine divers felonies, trespasses and other misdemeanors committed in the west riding of the county aforesaid, &c. him the said James Roberts and (certain persons) Richard Offerton gent. William Shirtcliffe, Thomas Middleton, Samuel Roberts, Ellen Roberts widow, Thomas Roberts, Richard Holden, Thomas Sheepshanke, Anthony Henley, Jonathan Crosse, George Sheepshanke, Anthony Roberts Benjamin Nicholson and ——— his wife, George Littlewood, Joseph Dell and Jonathan White, by the names of Richard Offerton late of Shirburgh in the county aforesaid gent. William Shirtcliffe

Declaration for maliciously and falsely procuring a man to be indicted for a riot.

Shircliffe late of the same labourer, *Thomas Middleton* late of *Mexbrough* in the county aforesaid labourer, *Samuel Roberts* late of *Beneby* in the county aforesaid labourer, the aforesaid *James Roberts* late of the same labourer, *Ellen Roberts* late of the same widow, *Thomas Roberts* late of the same labourer, *Jonathan Crosse* late of *Shirburgh* in the county aforesaid labourer, *George Sheepshanke* late of *Beneby* aforesaid labourer, *Anthony Roberts* late of the same labourer, *Benjamin Nicholson* late of the same labourer, and ——— his wife, *George Littlewood* late of *Shirburgh* aforesaid labourer, *Joseph Dell* late of *Beneby* aforesaid labourer, and *Jonathan White* late of the same labourer, for that they on the second day of *October* in the 7th year of the reign of the lord *William* the third by the grace of God now king of *England, &c.* with force and arms at *Beneby* aforesaid in the west riding of the county aforesaid riotously, routously, unlawfully and unjustly did assemble themselves and meet together, and did then and there riotously and routously obstruct [stop up] with certain posts, pails and rails, a certain way belonging to the aforesaid *William Savill* for the carrying of the tithes of corn and hay of him the said *William Savill* from the village of *Beneby* aforesaid to the village of *Mexbrough* aforesaid, so that he the said *William Savill* could not enjoy the same way as before, and did other wrongs to him the said *William Savill*, to the great damage of him the said *William*, and against the peace of the said lord the now king, his crown and dignity, and also against the form of the statute, &c. did falsely and maliciously cause and procure to be indicted, and that indictment against him the said *James Roberts* did falsely and maliciously prosecute and cause to be prosecuted, until he the said *James Roberts* afterwards, to wit, at the general quarter-session of the peace of the said lord the king holden in and for the west riding of the county aforesaid at *Pontefract*, on the 21st day of *April* in the 8th year of the reign of our lord *William* the third by the grace of God now king of *England, &c.* before *Henry* viscount *Downe*, *Lionell Pilkington* bart. and others their fellows justices of the said lord the king assigned to keep the peace in the west riding in the county aforesaid, and also to hear and determine divers felonies, trespasses and other misdemeanors committed in the west riding of the county aforesaid, was acquitted thereof in due manner according to the law and custom of this kingdom of *England*, (and then the plaintiff lays it upon another count for procuring him to be indicted by another indictment for a riot committed in the same manner the third of *October*, &c.) by pretext of which said premisses he the said *James Roberts* not only in his good name, fame, credit and

and esteem which he before enjoyed is very greatly hurt and very much hindered in doing divers honest and lawful businesses, but also he the said *James* hath been obliged and compelled to undergo grievous and hard labours, and to expend and lay out divers sums of money for his acquittal aforesaid, and for his discharge in this behalf, to the damage of him the said *James Roberts* of 20 l. and thereupon he brings suit, &c.

And the aforesaid *William Savill* by *William Aislaby* his attorney comes and defends the force and injury when, *Plea, not guilty.*

&c. and saith that he is in no wise guilty of the premises aforesaid above laid to his charge, as the aforesaid *James* above complains against him; and of this he puts himself upon the country, and the aforesaid *James* likewise; therefore the sheriff is commanded that he cause to come here from the day of the Holy Trinity in three weeks twelve, *Venue awarded.*

&c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. At which day the jury between the parties of the plea aforesaid was thereupon respited between them here until this day, to wit, from the day of Saint Michael in three weeks then next following, unless the justices of the lord the king assigned to take the assises in the county aforesaid by form of the statute, &c. should before come on Saturday the 25th day of July next past at the castle of York in the county aforesaid, &c. And now here at this day cometh the aforesaid *James* by his attorney aforesaid, and the aforesaid justices of assize before whom, &c. have sent here their record in these words: Afterwards *Posse.* on the day and at the place within contained, before Edward Ward, knt. chief baron of the exchequer of the lord the king, and John Turton, knt. one of the justices of the said lord the king assigned to hold pleas before the king himself, justices of the said king assigned to take the assises in the county of York by form of the statute, &c. came the within named *James Roberts* by his attorney within contained, and the within written *William Savill*, although solemnly called, came not, but made default: therefore let the jury whereof mention is within made be taken against him by default; and the jurors of that jury being called, some of them, to wit, Samuel Midgeley, William Metcalfe, Ralph Marsden, Abraham Haigh, Robert Taylor, Richard Burton, Christopher Shaw, John Telborne and John Billing came and are sworn upon that jury; and because the rest of the jurors of the same jury did not appear, therefore others of the bystanders, chosen by the sheriff of the county aforesaid for this purpose at the request of the aforesaid *James Roberts* and by the command of the justices aforesaid are newly appointed, whose

Tale.

whose names are affiled in the panel within written, according to the form of the statute in such case lately made and provided: and the jurors so newly appointed, to wit, *Thomas Ward, William Pulleine* and *John Priest* being called likewise come, who being chosen, tried and sworn to speak the truth concerning the matters within contained together with the other jurors aforesaid before impanelled and sworn, say upon their oath, that the aforesaid *William Savill* is guilty of the premisses within laid to his charge in manner and form as the aforesaid *James* within complains against him; and they assess the damages of him the said *James* by occasion of the matters within written, besides his costs and charges by him laid out about his suit in this behalf, to eleven pounds, and for those costs and charges to forty shillings: and because the justices here will advise themselves of and concerning the premisses before they give judgment thereupon, day is given to the aforesaid *James* here until in eight days of Saint *Hilary* for hearing their judgment thereof, for that they the said justices here are not yet, &c. At which day here cometh the aforesaid *James* by his attorney aforesaid; and hereupon the premisses being seen, and by the justices here more fully understood, it is considered that the aforesaid *James* do recover against the aforesaid *William* his damages aforesaid to 13*l.* by the jurors aforesaid in form aforesaid assessed, and also 17*l.* adjudged by the court here to him the said *James* by way of increase of his costs and charges aforesaid at his request; which said damages in the whole in themselves amount to 30 pounds; and the aforesaid *William* in mercy, &c.

*Curia advisare
vult.*

Judgment.

Mercy.

*Pleas before the Lord the King at Westminster of
the Term of the Holy Trinity in the ninth Year
of the Reign of William the Third, now King of
England, &c.*

Harrison against Cage and Wife. 1 *Ld. Raym.*
386.

Case against a
husband and
wife upon pro-
mise of mar-
riage by her
while sole.

Cambridgeshire, **B**E it remembered that heretofore, to wit,
(to wit) in the term of *Easter* in the ninth year
of the reign of our lord *William* the third, now king of
England, &c. before the lord the king at *Westminster* came
Henry Harrison, gent. by *Michael Johnson* his attorney, and
brought

brought into the court of the said lord the king then there his certain bill against *Adlard Cage* gent. and *Elizabeth* his wife in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill followeth in these words, to wit, *Cambridgeshire*, to wit, *Henry Harrison* gent. complains of *Adlard Cage* gent. and *Elizabeth* his wife, being in the custody of the marshal of the *Marshalsea*, of the lord the king before the king himself, for that, to wit, that whereas the aforesaid *Elizabeth* while she was sole, to wit, on the first day of *April* in the 8th year of the reign of our lord *William* the third now king of *England*, &c. at *Borough-green* in the county aforesaid (in consideration that he the said *Henry* then and yet being a bachelor and not married, at the special instance and request of her the said *Elizabeth* then and there had agreed with the said *Elizabeth*, and had assumed upon himself and faithfully promised to her the said *Elizabeth* that he the said *Henry* would marry for his wife the said *Elizabeth*) assumed upon herself, and to him the said *Henry* then and there faithfully promised that she the said *Elizabeth* would marry for her husband him the said *Henry*: and although he the said *Henry* giving faith to the promise and undertaking of the said *Elizabeth*, hath absolutely refused to contract matrimony with any other woman, and as yet is a bachelor and not married, and always from the time of making the promise and undertaking aforesaid (whilst the said *Elizabeth* was sole) was ready, and hath often offered lawfully to marry the said *Elizabeth* for his wife, to wit, at *Borough-green* Breach. aforesaid in the county aforesaid: nevertheless the aforesaid *Elizabeth* whilst she was sole, not at all regarding her promise and undertaking aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *Henry* in this behalf, hath not married him the said *Henry* for her husband (although to do this the said *Elizabeth* after the promise and undertaking aforesaid made, to wit, on the 29th day of *April* in the eighth year above said and often before and afterwards at *Borough-green* Request and refusal, aforesaid in the county aforesaid was requested by him the said *Henry*) but hath absolutely refused to marry him for her husband. And afterwards, to wit, on the first day of *October* in the eighth year above said at *Borough-green* and marrying the defendant. aforesaid in the county aforesaid married the aforesaid *Adlard* for her husband, contrary to the said promise and undertaking of her the said *Elizabeth*. And also whereas the aforesaid *Elizabeth* whilst she was sole, to wit, on the first day of *May* Count for money laid out for, and lent to the wife while sole. in the eighth year above said was indebted to him the said *Henry*

Breach.

Henry in 300*l.* of lawful money of *England* for money by him the said *Henry*, at the special instance and request of her the said *Elizabeth*, and for the said *Elizabeth* (whilst she was sole) before that time paid and laid out, and for money by her the said *Elizabeth* (whilst she was sole) before that time borrowed and received of the same *Henry*; and being so indebted, she the said *Elizabeth* (whilst she was sole) the same day and year last mentioned at *Borough-green* aforesaid in the county aforesaid in consideration thereof assumed upon herself, and to the said *Henry* then and there faithfully promised that she the said *Elizabeth* the said 300*l.* to him the said *Henry* would well and faithfully pay and content: nevertheless the aforesaid *Elizabeth* whilst she was sole, and the said *Adlard* and *Elizabeth* after the marriage between them celebrated, not at all regarding the promise and undertaking of her the said *Elizabeth* aforesaid last mentioned, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *Henry* in this behalf, the said 300*l.* or any part thereof (altho' often requested) have not nor hath either of them paid to him the said *Henry*, but to pay the same to him, or in any manner to satisfy him for the same, they have wholly refused and yet do refuse, whereupon the said *Henry* saith that he is injured, and hath sustained damage to the value of 300*l.* and thereupon he brings suit, &c.

Imparlance.

Non assumpsit
pleaded.

And now here at this day, to wit, *Wednesday* next after the morrow of the Holy *Trinity* in this same term, until which day the aforesaid *Adlard* and *Elizabeth* had leave to imparl to the said bill and then to answer, &c. before the lord the king at *Westminster* comes as well the said *Henry* by his attorney aforesaid as the aforesaid *Adlard* and *Elizabeth* by *Richard Edwards* their attorney; and the said *Adlard* and *Elizabeth* defend the force and injury when, &c. and say that the said *Elizabeth* did not take upon herself in manner and form as the aforesaid *Henry* above complains against them; and of this they put themselves upon the country, and the said *Henry* likewise: therefore let a jury come thereupon before the lord the king at *Westminster* on *Wednesday* next after three weeks of the Holy *Trinity*, and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards the process being thereupon continued between the said parties of the plea aforesaid by the jury being thereupon respited between them before the lord the king at *Westminster* until *Monday* next after three weeks of Saint *Michael* from thence next following, unless the justices of the lord the king assigned to take the assizes in the county aforesaid

aforesaid on *Thursday* the 11th day of *August* at the castle of *Cambridge* in the county aforesaid by form of the statute, &c. should before come for want of jurors, &c. At which day before the lord the king at *Westminster* cometh the said *Henry* by his attorney aforesaid, and the aforesaid justices before whom, &c. have sent here their record had before them in these words, to wit, Afterwards on the day and at the place within contained, before *Edward Ward* knt. chief baron of the exchequer of our lord the king, and *Thomas Knight* esq; for this time associated to the said *Edward Ward*, and *Thomas Rokeby* knt. one of the justices of the said lord the king assigned to hold pleas before the king himself, justices of him the said lord the king assigned to take the assises in the county of *Cambridge* by form of the statute, &c. the presence of the said *Thomas Rokeby* not being expected, by virtue of the writ of the said lord the king of *Si non omnes* came the within named *Henry Harrison* by his attorney within contained, and the within written *Adlard Cage* and *Elizabeth* his wife although solemnly required did not come, but made default; therefore let the jury whereof mention is within made be taken against them by default; upon which the jurors of that jury being sworn likewise came, who being chosen, tried and sworn to speak the truth concerning the matter within contained, say upon their oath that the aforesaid *Elizabeth* assumed upon herself in manner and form as the aforesaid *Henry* within complains against the said *Adlard* and *Elizabeth*; and they assess the damages of him the said *Henry* by occasion of the not performing of the promises and undertakings within specified, besides his costs and charges by him laid out about his suit in this behalf, to 400 *l.* and for those costs and charges to 40 *s.* Therefore it is considered that the aforesaid *Thomas Harrison* do recover against the aforesaid *Adlard* and *Elizabeth* his wife his damages aforesaid assessed by the jury in form aforesaid, and also 16 *l.* for his costs and charges aforesaid to him the said *Henry* by the court of the said lord the king now here with his assent adjudged of increase, which damages in the whole in themselves amount to 418 *l.* and the aforesaid *Adlard* and *Elizabeth* in mercy, &c. Afterwards, to wit, on *Saturday* the 26th day of *November* in the tenth year of the reign of our lord *William* the third now king of *England*, &c. Transcripts of the record and process aforesaid between the parties aforesaid of the plea aforesaid, with all things touching them, by pretext of a certain writ of the said lord the king of correcting errors, by the aforesaid *Adlard* and *Elizabeth* prosecuted in the premises before the justices of the said

Plea.

Verdict for the plaintiff.

Judgment.

Error brought in the exchequer chamber.

Errors assigned.

Judgment affirmed.

Costs for delay of execution,

and the record sent back to the king's bench.

saïd lord the king of the common bench, and the barons of the exchequer of the saïd lord the king of the degree of the coif in the chamber of the exchequer aforesaid, according to the form of the statute set forth in the parliament of the lady *Elizabeth* late queen of *England*, &c. holden at *Westminster* the 23d day of *November* in the 27th year of her reign, were transmitted from the saïd court of the saïd lord the king here before the king himself; and the aforesaid *Adlard* and *Elizabeth* appearing in the same court of the exchequer chamber, assigned certain matters for error in the record and process aforesaid to be had for the reversing and annulling the judgment aforesaid; to which the aforesaid *Henry* likewise appearing in the same court of the exchequer chamber aforesaid hath pleaded that neither in the record and process aforesaid, nor in the giving of the judgment aforesaid, was there any thing erroneous. And afterwards, to wit, on *Tuesday* the 27th day of *June* in the 11th year of the reign of our lord *William* the third now king of *England*, &c. as well the record and process aforesaid, and the judgment given upon the same, as the aforesaid causes by the saïd *Adlard* and *Elizabeth* assigned and alledged for error being seen, and by the court of the exchequer chamber aforesaid diligently examined and more fully understood, it seemed to the saïd court of the exchequer chamber aforesaid that the saïd record is in no wise vitious or defective, and that the saïd record is in no wise erroneous, therefore it was then and there considered by the same court of the exchequer chamber aforesaid, that the judgment aforesaid should in all things be affirmed and stand in all its force and effect, the saïd causes and matters by the saïd *Adlard* and *Elizabeth* assigned and alledged for error in any wise notwithstanding: and it was then and there further considered by the saïd court that the saïd *Henry* do recover against the saïd *Adlard* and *Elizabeth* 10*l.* and 10*s.* adjudged by the court there to the saïd *Henry* with his assent, according to the form of the statute thereof made and provided, for his damages, costs and charges which he hath sustained by occasion of the delay of execution of the judgment aforesaid by pretext of the prosecution of the saïd writ of error; and thereupon the record aforesaid, and also the process aforesaid of the justices of the common bench aforesaid, and the saïd barons of the exchequer aforesaid had before them in the premisses were then sent back by the same justices and barons, according to the form of the statute, &c. before the lord the king wheresoever, &c. and do now remain in the court of the lord the king here before the king himself, &c. Afterwards, to wit, on *Wednesday* next

next after three weeks of the Holy Trinity in the 13th year of the reign of our lord William the third now king of England, &c. before the said lord the king at Westminster cometh the aforesaid Henry Harrison by his said attorney, and acknowledgeth himself to be satisfied by the aforesaid Adlard and Elizabeth of the debt, damages, costs and charges aforesaid, therefore they the said Adlard and Elizabeth are thereupon acquitted of the debt, damages, costs and charges aforesaid, &c.

Satisfaction acknowledged.

Hilary Term in the 9th Year of King William the Third. Roll 1175.

Chaloner against Davis. 1 Ld. Raym. 400.

Buckinghamshire, **T**HOMAS Davis late of the parish of (to wit) Stokelyne in the county of Oxford yeoman, otherwise called Thomas Davis of Baynton in the parish of Stokelyne in the county of Oxford yeoman, was summoned to answer William Chaloner gent. of a plea that he render to him 100 pounds which he oweth to him and unjustly detains, &c. And whereupon the aforesaid William by William Vaux his attorney saith, That whereas by a certain writing of articles of agreement made the first day of May in the 8th year of the reign of the lord the now king, between the said William Chaloner by the name of William Chaloner of Steeple-Claydon in the county of Buckingham gent. of the one part, and the aforesaid Thomas by the name of Thomas Davis of Baynton in the parish of Stokelyne in the county of Oxford yeoman, of the other part, at Aylesbury in the county of Buckingham aforesaid (the counterpart whereof sealed with the seal of the aforesaid Thomas he the said William Chaloner brings here into court, the date whereof is the same day and year) it was concluded and agreed in manner and form following, that is to say, First of all it was agreed by and between the parties aforesaid, and the aforesaid William Chaloner for himself, his heirs, executors, administrators and assigns, by the writing of the articles aforesaid covenanted and granted to and with the aforesaid Thomas Davis, his heirs and assigns, that the said William Chaloner and all persons claiming under him on or before the 17th day of November next following the date of the writing of the articles aforesaid, should make,

Debt for 100l. penalty upon articles of agreement.

That plaintiff should make defendant a good conveyance of certain lands.

That the defendant at the time of the execution of such conveyance and in consideration thereof should pay plaintiff 503*l*.

At the house of Sir F. C.

seal and deliver to the aforesaid *Thomas Davis*, at the costs and charges of the said *Thomas Davis*, a good and sufficient title, assurance and conveyance in the law of all that messuage with the out-houses, edifices, yards, orchards, gardens and appurtenances thereunto belonging, and of one close of arable land adjoining to the aforesaid messuage, and of all those two yard-lands of arable, meadow and pasture ground with the appurtenances; all which said premises are situate and being in the town, parish and fields of *Steeple-Claydon* aforesaid, and then were in the possession of the said *William Chaloner*, and before that time were in the possession of *Thomas Snow* deceased. Also secondly, it was further agreed, and the said *Thomas Davis* for himself, his executors and administrators covenanted and agreed to and with the said *William Chaloner*, his executors, administrators and assigns by the writing of the articles aforesaid, that he the said *Thomas Davis* or his assigns at the time of the execution and sealing of such conveyance, and in consideration thereof would well and faithfully pay or cause to be paid to the aforesaid *William Chaloner*, his executors, administrators or assigns, the just and full sum of five hundred and three pounds of lawful money of *England*, at the house of Sir *Francis Child* situate at *Temple Bar, London*. Thirdly, it was agreed that the said *Thomas Davis* should enter upon and enjoy the aforesaid close adjoining to the said house at the same time when the said sum of 305*l*. should be paid to the aforesaid *William Chaloner* or his assigns, and also all commons for cows and horses belonging to the said two yard-lands. Fourthly, it was agreed that the aforesaid *William Chaloner* and his assigns should enjoy all the lands and herbage and furze in the field called *Windmill-fields* in the parish of *Steeple-Claydon* aforesaid belonging to the aforesaid two yard-lands, until the crops which should be there growing in the year of our Lord 1697 should be reaped, cut and carried off, and that he the said *William Chaloner* should have free liberty to plough and sow the same. Fifthly, it was agreed that the said *Thomas Davis* and his assigns should enter upon the aforesaid messuage, out-houses, edifices and yards thereunto belonging, and a little piece of land about the spring adjoining to the backside of the said messuage, and should inclose the same with pale immediately after the date of the writing of the articles aforesaid, he the said *William Chaloner* and his assigns having liberty to go through the yard to fetch off his crops of corn then growing in the said close. Sixthly, it was agreed that the said *Thomas Davis* should enter upon all the sheep-commons upon the 29th day of *September* next following, and also

that

that he should enter upon and enjoy all the lands belonging to the said two yard-lands being in the woodfield, as soon as the crop then growing should be cut and carried off. Seventhly, it was agreed that the said *William Chaloner*, or any other person with his privity, should not cut any wood then growing upon any part of the premises at any time after that time. Lastly, it was agreed that the said *Thomas Davis* or his assigns yearly for ever afterwards should pay to the said *William Chaloner* or his assigns the sum of two shillings on the 29th day of *September*, and should appear at all the courts afterwards to be holden for the manor of *Steeple-Claydon* aforesaid; and for the true performance of all and singular the premises aforesaid, the aforesaid *William Chaloner* and *Thomas Davis* severally bound themselves to each other in the penal sum of 100 *l.* of lawful money of *England* by the same writing, as by the writing of the articles aforesaid appeareth, he the said *William Chaloner* in fact saith that he the said *William Chaloner* from the time of the making of the writing of the articles aforesaid always hitherto hath been ready well and faithfully to observe, perform and keep all and singular the covenants, grants, articles and agreements in the said writing of the articles aforesaid above specified on his part to be observed, performed and kept, according to the form and effect of the writing of the articles aforesaid; and that the aforesaid *Thomas* from the time of the making of the writing of the articles aforesaid hitherto hath not observed, performed or kept any of the covenants, grants, articles or agreements whatsoever in the writing of the articles aforesaid above specified on his part to be observed, performed and kept, according to the form and effect of the writing of those articles; and particularly he the said *William Chaloner* in fact saith, that he the said *William Chaloner* and one *Robert Markham* of *Yardley* in the county of *Hertford* esq; after the making of the said writing of the articles aforesaid, and before the said 17th day of *November* in the same writing of the articles mentioned, to wit, on the 16th day of the same month of *November* (the same *Robert Markham* being possessed of and in the tenements and premises aforesaid for the residue of two terms of years, the reversion thereof belonging to the said *William Chaloner* and his heirs) at *Steeple-Claydon* aforesaid made and sealed their certain indenture of bargain and sale of the tenements and premises aforesaid in the writing of the articles aforesaid mentioned, and then and there delivered that indenture as their act and deed to the use of him the said *Thomas*, by which said indenture the said *William Chaloner* and *Robert*, for and in consideration of the

Both bind themselves in pool, for the true performance, &c.

Averment that the plaintiff and one *R. M.* (who was possessed of the residue of two terms of years) sealed indentures of lease and release of the premises, and delivered to the use of the defendant.

several sums of 5 s. of lawful money of *England* to them the said *William Chaloner* and *Robert* in hand respectively paid, bargained and sold to the said *Thomas* the tenements and premises afore said, by the names of all that messuage with the out-houses, edifices, yards, orchards, gardens and appurtenances thereunto belonging, and of one close of arable land adjoining to the afore said messuage, and of a little piece of land about the spring adjoining to the backside of the said messuage, and also of all those two yard lands of arable land, meadow and pasture with the appurtenances, situate and being in the town, parish and fields of *Steeple-Claydon* afore said, and which then were in the possession of the said *William Chaloner* and *Thomas Davis*, or of one of them, and which before that time were in the possession of *Thomas Snow* deceased, and the reversion and reversions, remainder and remainders of all and singular the premises, and of all the rents, services and other profits of the premises, and of every part and parcel thereof; to have and to hold the premises afore said with the appurtenances to the said *Thomas Davis* and his assigns from the day next before the day of the date of the said indenture for and during the term of one whole year from thence next following and fully to be compleat and ended; yielding and paying therefore the rent of one pepper corn at the feast of *Saint Michael* the archangel only, if the same should be demanded, to the intent that by virtue of the indenture afore said, and the statute for transferring of uses into possession, the said *Thomas Davis* might be in the actual possession of the premises, and able to accept of a grant and release of the reversion and inheritance thereof to himself the said *Thomas Davis* and his heirs; and that they the said *William Chaloner* and *Robert* afterwards, to wit, upon the said 17th day of *November* in the writing of the articles afore said (so as before is set forth) mentioned, at *Steeple-Claydon* afore said made and sealed a certain other indenture of release and confirmation of the tenements and premises afore said, and then and there delivered that indenture as their act and deed to the use of him the said *Thomas* and his heirs, by which said indenture the said *William Chaloner* for and in consideration of the sum of 503 l. of lawful money of *England* to him the said *William* in hand mentioned to be paid, and the said *Robert* in consideration of the sum of 5 s. of like lawful money to him the said *Robert* in hand likewise mentioned to be paid, released and confirmed to the said *Thomas Davis* (being in the actual possession thereof) the premises afore said, by the said names of all that messuage with the out-houses, edifices, yards, orchards, gardens and appurtenances thereunto belonging, and

The release.

and of one close of arable land adjoining to the aforesaid messuage, and of a little piece of land about the spring adjoining to the backside of the said messuage, and also of all those two yard-lands of arable land, meadow and pasture with the appurtenances, situate and being in the town, parish and fields of *Steeple Claydon* aforesaid, and which then were in the possession of the said *William Chaloner* and *Thomas Davis*, or of one of them, and which before that time were in the possession of *Thomas Snow* deceased, and the reversion and reversions, remainder and remainders of all and singular the premises, and of all the rents and services and other profits of the premises, and of every part and parcel thereof, and also all the estate, right, title, interest, claim and demand whatsoever which they the said *William Chaloner* and *Robert* had or hath, or in any manner could or ought to have of, in or to the premises, or any part thereof; to have and to hold the premises aforesaid with the appurtenances to the said *Thomas*, his heirs and assigns, to the only use of the said *Thomas Davis*, his heirs and assigns for ever; and that the said *Thomas* agreed for himself and his assigns by the same indenture yearly afterwards for ever to render and pay to the said *William Chaloner* or his assigns the sum of 2 s. upon the 29th day of *September*, and to appear at all the courts afterwards to be holden for the manor of *Steeple-Claydon* aforesaid, and the aforesaid *William Chaloner* then and there was ready and offered, and always afterwards hath been and yet is ready at the costs of him the said *Thomas* to make and procure to be made any other conveyance of the tenements and premises aforesaid, according to the form of the articles aforesaid. And the said *William Chaloner* in fact further saith that the said *Thomas* afterwards, to wit, on the 17th day of the said month of *November* at *Steeple-Claydon* aforesaid had notice of the premises, and so having notice thereof, the said *Thomas* then and there absolutely refused himself to agree to that indenture, or to accept the same of them the said *William Chaloner* and *Robert* as the deed of them the said *William Chaloner* and *Robert* to the aforesaid *Thomas*, and yet doth refuse; and the said *Thomas* or his assigns have not paid or caused to be paid to the said *William Chaloner* the said sum of 503 l. according to the form and effect of the writing of the articles aforesaid, but to pay the same to the said *William Chaloner* according to the form and effect of the articles aforesaid, the said *Thomas* hath denied, and yet doth deny, by which an action hath accrued to him the said *William Chaloner* to require and have of the aforesaid *Thomas* the said 100 l. Nevertheless the said *Thomas* although often requested hath not yet rendered to the said *William Chaloner* the said

100 l.

100*l.* but to render the same to him hath denied, and yet doth deny, whereupon he saith that he is injured, and hath sustained damage to the value of 20*l.* and thereupon he brings suit, &c.

Demurrer, and joinder in demurrer.

Entered of Michaelmas Term in the 9th Year of King William the Third. B. R. Roll 178.

Doctor Groenvelt *against* Doctor Burwell and others,
Censors of the College of Physicians. 1 Ld.
Raym. 454.

Trespas, assault
and imprison-
ment against
the censors, &c.
of the college
of physicians.

London, **B**E it remembered that heretofore, to wit, in the (to wit) **B** term of *Easter* last past before the lord the king at *Westminster* came *John Groenvelt* doctor in physick by *Thomas Prime* his attorney, and brought here in the court of the said lord the king then there his certain bill against *Thomas Burwell*, *Richard Torles*, *William Dawes* and *Thomas Gill* doctors in physick, and *John Cole*, in the custody of the marshal, &c. of a plea of trespas, assault and imprisonment; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, (to wit) *John Groenvelt* doctor in physick complains of *Thomas Burwell*, *Richard Torles*, *William Dawes* and *Thomas Gill* doctors in physick, and *John Cole*, being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, for that they the said *Thomas Burwell*, *Richard Torles*, *William Dawes*, *Thomas Gill* and *John Cole*, on the 15th day of *April* in the 9th year of the reign of the lord *William* the third now king of *England*, &c. with force and arms, that is to say with swords, staves and knives made an assault upon him the said *John Groenvelt* at *London* aforesaid, to wit, in the parish of the blessed *Mary of the Arches* in the ward of *Cheape*, and him the said *John Groenvelt* then and there did beat, wound and ill treat, so that of his life it was greatly despaired, and did then and there imprison him the said *John Groenvelt*, and him so in prison there detained for a long space of time, to wit, for the space of seven days from thence next following without any reasonable cause, against the will of him the said *John Groenvelt*, and contrary to the law and custom of this kingdom of *England*, and other wrongs to him then and there did, against the peace of the said lord the now king, and to the damage of him the said *John Groenvelt* of 2000*l.* and thereupon he brings suit, &c.

And

And now here at this day, to wit, *Saturday* next after three weeks of Saint *Michael* in this same term, until which day the aforesaid *Thomas Burwell*, *Richard Torlefs*, *William Dawes*, *Thomas Gill* and *John Cole* had leave to imparl to the bill aforesaid, and then to answer, &c. before the lord the king at *Westminster* come as well the aforesaid *John Groenvelt* by his attorney aforesaid, as the aforesaid *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* by *Richard Swift* their attorney, and they the said *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* defend the force and injury when, &c. and as to the coming with force and arms, or whatsoever that is against the peace of the said lord the now king, and also the beating and wounding aforesaid above supposed to be done, say that they are not guilty thereof, and of this they put themselves upon the country, and the aforesaid *John Groenvelt* thereof likewise, &c. And as to the residue of the trespass and imprisonment aforesaid above supposed to be done, they the said *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* say, that the aforesaid *John Groenvelt* ought not to have or maintain his said action thereof against them, because they say that long ago, and long before the aforesaid time when the trespass and imprisonment aforesaid is supposed to be done, the lord *Henry* the eighth late king of *England*, by his letters patent sealed under his great seal of *England* bearing date at *Westminster* the 23d day of *September* in the tenth year of his reign, which they the said *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* bring here into court, reciting that whereas it was thought the blessing of his royal office, with all due consideration to consult the happiness of the people of his realm, and first of all, if it could be, how he might in due season put a stop to the enterprises of wicked persons, he chiefly held it necessary to check the boldness of wicked men also who professed physick more for the sake of avarice than in confidence of any good conscience, from whence very many inconveniences did arise to the rude and credulous common people; therefore partly imitating the example of the well-governed cities in *Italy* and in many other nations, partly yielding to the prayers of the grave men and doctors *John Chambre*, *Thomas Linacre*, *Ferdinand de Victoria* his physicians, and of *Nicholas Halferwell*, *John Francisco* and *Robert Yaxley* physicians, and especially of the most reverend father in Christ and lord *Thomas*, titled of the holy church beyond *Tiber* cardinal priest of the most holy *Roman* church, archbishop of *York*, and the most noble chancellor of his realm of *England*, he willed and commanded to be instituted a perpetual college of doctors and grave men who should publicly practise

Imparlance.

Plea, not guilty as to the force and arms, beating and wounding and issue thereupon joined.

As to the residue they plead in bar.

Setting out the letters patent of *Henry* the 8th to the college of physicians.

practise physick in his city of *London* and suburbs and within seven miles every way from that city, to whom, as he hoped it would be for his own honour, as well as for the care of the public utility, to deter malicious persons (whose ignorance and rashness he remembered), as well by their example and gravity, as to punish them by his laws lately set forth, and by constitutions to be ordained by the same college, which things that they might be more easily rightly accomplished, he granted to the aforesaid doctors *John Chambré, Thomas Linacre, Ferdinand de Victoria* his physicians, *Nicholas Halfe-well, John Francis, and Robert Yaxley* physicians, that they and all the men of the same faculty of and in the city aforesaid should be in thing and name one body and perpetual commonalty or perpetual college, and that the same commonalty or college might every year for ever chuse and make of that commonalty some provident man and skilful in the faculty of physick for the president of the same college or commonalty, to supervise, review and govern for that year the college or commonalty aforesaid, and all men of the same faculty, and the businesses of the same; and that they the said president and college or commonalty should have a perpetual succession, and a common seal for the businesses of the said commonalty and president to be kept for ever, and that they and their successors for ever should be persons able and capable to purchase and possess in fee and perpetuity lands and tenements, rents and other possessions whatsoever: he also granted for himself and his heirs to them and their successors, that they and their successors might purchase to themselves and their successors as well in the said city as without it, any lands and tenements whatsoever not exceeding the yearly value of twelve pounds, the statute of alienations in mortmain notwithstanding; and that they by the name of the president of the college or commonalty of the faculty of physick might plead and be impleaded before whatsoever judges in all courts and actions whatsoever, and that the aforesaid president and college or commonalty and their successors, lawful and honest assemblies of themselves, and statutes and ordinances for the wholesome government, overlooking and correction of the college or commonalty aforesaid, and of all men practising the same faculty in the said city or within seven miles in circuit of the same city, according to the exigence of necessity, as often as and when need should be, might lawfully and without peril make without the hindrance of the said late king, his heirs or successors, his justices, escheators, sheriffs and others his bailiffs or ministers, or of his heirs and successors whatsoever. He also granted to them
the

the said president and college or commonalty and their successors, that no body in the said city or seven miles in the circuit thereof should exercise the said faculty unless he should be admitted to this by the said president and commonalty or their successors for the time being, by the letters of the same president and college sealed with their common seal, under the penalty of 100 shillings for every month wherein (not being admitted) he should exercise the same faculty, half thereof to be applied to the said lord the king, and half to the said president and college. Besides he willed and granted for himself and his successors (as much as in himself was) that by the president and college of the aforesaid commonalty for the time being and their successors for ever, four persons should be chosen by them every year, who should have the overseeing and searching, correction and government of all and singular the physicians of the said city practising the faculty of physick in the same city, and of other foreign physicians whomsoever practising and using in any manner the said faculty of physick within the same city, suburbs thereof, or within seven miles in circuit of the same city, and the punishment of them for their offences in not well exercising, doing and using the same; and also the overseeing and searching of all medicines, and the reception (or recipes) of them by the said physicians or any of them to the liege people of the said late king for curing, and their infirmities to be given, put and used, as often and when need should be for the profit and utility of the said liege people of the said late king; so that the punishment of such physicians using the said faculty of physick so offending in the premisses should be executed by fines, amercements, imprisonment of their bodies, and by other ways reasonable and fitting. He also willed and granted for himself, his heirs and successors, (as much as in him was) that neither the president nor any other of the said college of physicians, nor their successors, nor any of them exercising that faculty in any manner for the future within the city aforesaid and the suburbs thereof, or elsewhere should be summoned or put, nor should any of them be summoned or put in any assises, juries, inquests, inquisitions, attaints, and other recognitions within the said city or suburbs thereof in time to come, to be taken before the mayor and sheriffs, or coroners of his said city for the time being, or to be summoned by any their officer or minister, or their officers or ministers, although the same juries, inquisitions or recognitions should be summoned upon the writ or writs of right of the said late king or his heirs, but that the said masters or governors and commonalty of the faculty aforesaid and their successors,

That they were
incorporated.

The statute of
Hen. 8.
confirming the
letters patent.

successors, and every of them exercising the said faculty, should be thereof acquitted and absolutely discharged for ever against the said late king, his heirs and successors, and against the mayor and sheriffs of his city aforesaid for the time being, and all their officers and ministers whatsoever, as by the same letters patent among other things more fully appears. And they the said *Thomas, Richard, William, Thomas* and *John Cole* further say, that by virtue of the letters patent aforesaid, the aforesaid *John Chambre, Thomas Linacre, Ferdinand de Victoria, Nicholas Halsewell, John Francis* and *Richard Yaxley* physicians, and all men of the same faculty in the city aforesaid were one body and perpetual commonalty, or perpetual college; and afterwards by a certain act set forth in the parliament of the said late king *Henry* the eighth, holden at *Westminster* in the county of *Middlesex* the last day of *July* in the 15th year of the same late king by prorogation, (amongst other things) it was enacted by the authority of the same parliament, that forasmuch that the making of the said corporation was meritorious and very good for the commonwealth of this realm of *England*; and besides it was expedient and necessary to provide that no person of the said politic body and commonalty aforesaid should be suffered to exercise and practise physick but only such persons as should be profound, sad and discreet, groundedly learned, and deeply studied in physick: in consideration whereof, and for the farther authorizing of the said letters patent, and also for enlarging of farther articles for the said commonwealth, to be had and made by the said late king, with the consent of the lords spiritual and temporal and commons in the same parliament assembled, it is enacted amongst other things, that the said corporation of the said commonalty and fellowship of the faculty of physick aforesaid, and all and every grant, article and other things contained and specified in the said letters patents, should be approved, granted, ratified and confirmed in the same parliament, and clearly authorized and admitted by the same parliament good, lawful and available to the aforesaid body corporate and their successors for ever, in as ample and large manner as may be taken, thought and construed by the same letters patents; and it is further enacted, ordained and established by the said act, that the aforesaid six persons in the aforesaid letters patents named as principals, and first named of the said commonalty and fellowship, should choose to them two others of the same commonalty, who from thenceforth should be called and named elects, and that the same elects should yearly choose one of them to be president of the said commonalty, and as often as any of the rooms

and

and places of the said elects should fortune to be void by death or otherwise, then the survivors of the said elects within 30 or 40 days next after the death of them, or any of them, should choose, name and admit one or more, as need should require, of the most learned and expert men of and in the said faculty in *London* to supply the said room and number of 8 persons, so that he or they that should be so chosen be first by the said survivors strictly examined after a form devised by the said elects, and also by the same survivors approved, as by the same act amongst other things more fully appears. And they the aforesaid *Thomas, Richard, William, Thomas, and John* further say, that afterwards and long before the aforesaid time when, &c. by a certain other act set forth in the parliament of lady *Mary* late queen of *England*, holden at *Westminster* on the 24th day of *October* in the first year of her reign, it was enacted by the authority of the same parliament, that the said statute or act of parliament before recited in every article and clause therein contained should from thenceforth stand and continue still in full force, strength and effect, any statute, law, custom, or any other thing, made, had or used to the contrary, in any wise notwithstanding: and for the better reformation of divers enormities happening to the commonwealth by the evil using and undue administration of physick, and for the enlarging of further articles for the better execution of the things contained in the aforesaid grant, it was further enacted by the same act made in the aforesaid parliament of the said late queen, That whosoever the president of the college or commonalty of the faculty of physick of *London* for the time being, or such as the said president and college should yearly, according to the tenor and meaning of the said act, authorize to search, examine, correct and punish all offenders and transgressors in the said faculty within the same city and precinct in the said act expressed, should send or commit such offender or offenders for his or their offences or disobedience, contrary to any article or clause contained in the said grant or act, to any ward, gaol or prison within the same city or precinct aforesaid, (the *Tower of London* except) That then from time to time the warden, gaoler or keeper, wardens, gaolers or keepers of the wards, gaols and prisons within the city or precinct aforesaid (except before excepted) should receive into his, or their prisons, all and every such person and persons so offending as should be sent or committed to him or them as is aforesaid, and there should safely keep the person or persons so committed into any of their prisons, at the proper costs and charges of the said person or persons so committed,

without

The statute of
Mary confirm-
ing the same,

and enlarging
their power.

without bail or mainprize, until such time as such offender or offenders, or disobedients, should be discharged of the said imprisonment by the said president, and such persons as by the said college should be authorized, upon pain that every such warden, gaoler and keeper doing the contrary, should lose and forfeit the double of such fines and amercements as such offender and offenders, or disobedients, should be assessed to pay, by such as the said president and college should authorize as aforesaid, so that the same fine and amercement should not be at any time above the sum of 20*l.* the moiety thereof to be employed to the use of the said late queen, her heirs and successors, the other moiety unto the said president and college; all which forfeitures should be recovered by action of debt, bill, plaint or information in any of the said late queen's, her heirs and successors courts of record against any such warden, gaoler or keeper so offending, in which suit no essoin, wager of law nor protection should be allowed, nor be admitted by the defendant. And it was further enacted by the authority of the said parliament, that all justices, mayors, sheriffs, bailiffs, constables, and other ministers and officers within the city and precinct aforesaid, upon request of them to be made, should help, aid and assist the president of the said college and all persons by them from time to time authorized for the due execution of the said acts, upon pain for not giving help to run in contempt of the said late queen, her heirs and successors, as by the same act amongst other things more fully appears. And they the said *Thomas, Richard, William, Thomas, and John Cole* further say, that the aforesaid *John Groenvelt* for a long space of time, to wit, for five years last past and more, within the city of *London* and the circuit of seven miles of the same, to wit, at *London* aforesaid in the parish and ward aforesaid hath exercised and used, and as yet doth exercise and use the faculty of physick, and the same *John* so exercising and using that faculty, and pretending himself to be very skilful in the same, before the aforesaid time when, &c. to wit, on the first day of *April* in the 8th year of the reign of our lord *William* the third now king of *England*, &c. there undertook and assumed upon himself to cure and heal one *Susan Witball*, then the wife of one *William Witball*, of a certain infirmity or disease a little time after the time of her travail, (and delivery) and happening by occasion thereof as it was supposed, whereof she laboured and was detained, for forty shillings to him the said *John Groenvelt* in hand paid, and other forty shillings to him afterwards to be paid: nevertheless the said *John Groenvelt*, his cure, then and there about the said *Susannah*, so indiscreetly, evilly, inartificially and

and unskilfully applied, and such unwholesome, wicked, bad and pernicious pills and noxious drugs to her then and there gave and administered, that the said *Susannah* not only was not healed, but became very much more and greatly infirm, and was greatly and dangerously hurt in her body, and from thenceforth hitherto hath laboured thereof with extreme grief, and languished in the most sad and miserable condition, and as yet so labours thereof, and is languid and incurable, so that her life was despaired of, and as yet is despaired of, by occasion of the bad, unskilful and pernicious practice of him the said *John Groenvelt* in this behalf committed and perpetrated upon the body of her the said *Susannah*. And they the said *Thomas, Richard, William, Thomas*, and *John Cole* further say, that by virtue of the letters patent aforesaid, and by force of the statutes aforesaid, one *Thomas Millington* knt. doctor in physick, a prudent man and skilful in the faculty of physick, and then one of the commonalty of the college of physicians in *London* aforesaid, and then being one of the eight elects of the college or commonalty aforesaid, before the aforesaid time when, &c. to wit, on the 30th day of *September* in the 8th year of the reign of the lord the now king at the college of physicians, situate in the parish of *Christchurch* in the ward of *Farringdon Within London*, was in due manner chosen and preferred to the office of president of the college or commonalty aforesaid, and being in the office of president of the college or commonalty aforesaid, they the same president and college of the aforesaid commonalty on the same 30th day of *September* in the 8th year aforesaid at the college aforesaid in the parish of *Christchurch* aforesaid did choose them the said *Thomas Burwell, Richard, William* and *Thomas Gill*, prudent men and skilful in the faculty of physick, and then being doctors of the college aforesaid to be the four censors or governors of the commonalty aforesaid to oversee and search, correct and govern all and singular the physicians of the said city using the faculty of physick in the same city, and other foreign physicians whomsoever frequenting to, and using the faculty of physick in any manner within the same city and the suburbs thereof, or within seven miles in circuit of the same city, and to punish them for their faules, in not well exercising, doing and using the same, and also to oversee and search their medicines, and their recipes by the said physicians or any of them given, applied or used for curing the infirmities of the liege people, and such like of the said lord the king as often and when need should be, and for the profit and utility of the same liege people, and to punish those physicians delinquents using the said faculty of physick in the premisses by fines, amerce-

amercements and the imprisonment of their bodies, and by other ways reasonable and fitting, according to the form and effects of the letters patents aforesaid, and of the statutes aforesaid: which said *Thomas, Richard, William and Thomas* then and there took upon themselves that office, and became censors and governors of the college or commonalty aforesaid in due manner, and so, until the aforesaid time when, &c. and afterwards continued and existed; and they the said *Thomas, Richard, William, Thomas and John Cole* further say, that afterwards and before the said time when, &c. to wit, on the fifth day of *February* in the 8th year of the reign of the lord the now king at the college of physicians in the parish of *Christchurch* in the ward of *Farringdon Within* aforesaid, a certain complaint on the behalf of the aforesaid *William Withall* and *Susannah* his wife was made and exhibited to them the said *Thomas, Richard, William and Thomas* then being censors or governors of the college aforesaid as before is set forth, against the aforesaid *John Groenvelt* for the aforesaid undue, unskilful, bad and pernicious practice upon the body of the aforesaid *Susannah* by him the said *John Groenvelt* so as before is set forth, done and committed; and thereupon the aforesaid *John Groenvelt* afterwards, to wit, on the same 5th day of *February* in the 8th year aforesaid at *London* aforesaid in the parish of the blessed *Mary of the Arches* in the ward of *Cheape* aforesaid was in due manner summoned by them the said *Thomas, Richard, William and Thomas*, then censors or governors of the college aforesaid, to appear before them the said censors or governors of the college aforesaid at the college aforesaid on the 9th day of *April* then next following, to be examined and to answer of and concerning the premisses; and that before the aforesaid time when, &c. to wit, on the same 9th day of *April* in the 9th year of the reign of the said lord the now king, before the aforesaid *Thomas, Richard, William and Thomas*, then being censors or governors of the college aforesaid as before is set forth, at the college aforesaid came the aforesaid *John Groenvelt* in his proper person, and the aforesaid censors or governors thereupon then and there did proceed to examine and inquire into the matter of complaint aforesaid, and upon the attestation of divers credible persons then present affirming the truth of the complaint aforesaid, in the presence of him the said *John Groenvelt*, and upon hearing him the said *John Groenvelt* whatsoever he could say in defence or excuse of himself, and upon consideration of the whole matter aforesaid they the said *Thomas, Richard, William and Thomas*, being censors or governors of the college aforesaid so as before is set forth, did then and there by virtue of the letters patent and of the statutes aforesaid

aforesaid adjudge the aforesaid *John Groenvelt* to be guilty of the undue, unskilful and bad practice aforesaid, and therefore they did then and there impose a fine of 20 l. of lawful money of *England* upon him the said *John Groenvelt*; and they did further adjudge that he the said *John Groenvelt*, for his offence aforesaid, should be committed to the gaol of the said lord the king of *Newgate* in *London*, and should have and undergo imprisonment in the same gaol at his own proper costs and charges without bail or mainprize for the space of twelve weeks then next following, unless he should be sooner discharged by the president of the college aforesaid, and such persons as by the college aforesaid should be thereunto lawfully authorized, or otherwise by due course of law; which said adjudication of those censors or governors was put, and recorded in writing, and now remains in the power of them the said censors or governors not annulled, but is in full force; and the aforesaid *Thomas, Richard, William, Thomas, and John Cole* further say, that they the said *Thomas, Richard, William* and *Thomas*, with intention that execution of the judgment or adjudication aforesaid should be done by virtue of the letters patents and of the statute aforesaid then and there by their certain precept or warrant in writing reciting the complaint and judgment or adjudication aforesaid at large under their hands and seals did command him the said *John Cole* (being their minister to execute such their precept) that he should take the body of him the said *John Groenvelt*, and deliver him to the keeper of the gaol of *Newgate* aforesaid, there to remain without bail or mainprize for the space of the aforesaid twelve weeks, unless he should be sooner delivered by the president of the college aforesaid, and such persons as by the college aforesaid should be authorized, or otherwise by due course of law; by virtue of which warrant the aforesaid *John Cole* at the said time when, &c. at *London* aforesaid in the parish of the blessed *Mary of the Arches* in the ward of *Cheape* aforesaid took the aforesaid *John Groenvelt* and then delivered him together with the warrant aforesaid under the hands and seals of the same four censors, specifying the premisses to the keeper of the gaol aforesaid, there to be detained in form aforesaid, as it was well and lawful for them to do; and the same *John Groenvelt* thereupon was detained in prison there for the time aforesaid in the declaration aforesaid mentioned, which said taking, imprisonment and detention in the prison aforesaid of the aforesaid *John Groenvelt* in form aforesaid and for the cause aforesaid done, are the same residue of the trespass and imprisonment aforesaid whereof the aforesaid *John Groenvelt* himself now complains; and this
they

they are ready to verify: whereupon they pray judgment if the aforesaid *John Groenvelt* ought to have or maintain his action aforesaid thereof against them, &c.

B. Shower,
Law. Agar,
Jo. Keene.

Replication.

And the aforesaid *John Groenvelt* saith that he by any thing by the aforesaid *Thomas Burwell, Richard Torlefs, William Dawes, Thomas Gill* and *John Cole* above in pleading alledged ought not to be barred from having his action aforesaid as to the residue of the trespass, imprisonment and detention in prison aforesaid against them; because he saith that well and true it is that he the said *John Groenvelt* for a long space of time, to wit, for five years next before the exhibiting the bill of him the said *John Groenvelt* aforesaid, was and as yet is a doctor of physick, and did exercise and use the art or faculty of physick for the whole time aforesaid within the city of *London* aforesaid and the circuit of seven miles of the same, as they the aforesaid *Thomas Burwell, Richard Torlefs, William Dawes, Thomas Gill* and *John Cole* have above in pleading alledged, but the same *John Groenvelt* protesting that the lord *Henry* late king of *England* did not grant by any such letters patents as they the said *Thomas Burwell, Richard Torlefs, William Dawes, Thomas Gill* and *John Cole* have above in pleading alledged; and protesting also that there is not had any such record of the act of parliament of the said late king *Henry* the eighth as they the said *Thomas Burwell, Richard Torlefs, William Dawes, Thomas Gill* and *John Cole* have above in pleading likewise alledged; and protesting also that he the said *John Groenvelt* his cure about the said *Susannah Withall* in the said plea of them the said *Thomas Burwell, Richard Torlefs, William Dawes, Thomas Gill* and *John Cole* named, did not indiscreetly, evilly, inartificially and unskilfully apply, nor any unwholesome, wicked, bad and pernicious pills or noxious drugs to her grave, or administered, as they the said *Thomas Burwell, Richard Torlefs, William Dawes, Thomas Gill* and *John Cole* by their plea aforesaid have above alledged; and protesting also that no complaint on the behalf of the aforesaid *William Withall* and *Susannah* his wife was made or exhibited to them the said *Thomas, Richard, William* and *Thomas Gill* against him the said *John Groenvelt* for the undue, unskilful, bad and pernicious practice upon the body of the aforesaid *Susannah* by him the said *John Groenvelt* supposed to be done and committed, as they the said *Thomas, Richard, William, Thomas* and *John Cole* above in pleading have

have alledged; and that no such judgment or adjudication of the aforesaid *Thomas, Richard, William and Thomas* was given, as they the said *Thomas, Richard, William, Thomas and John Cole* by their plea aforesaid have above alledged; for plea the said *John Groenvelt* by replying saith, That they the said *Thomas Burwell, Richard Terless, William Dawes, Thomas Gill and John Cole* of their own wrong made an assault upon him the said *John Groenvelt*, and did ill treat, imprison him, and for the space of seven days did detain him in prison in manner and form as the aforesaid *John Groenvelt* above hath declared against them, and not by virtue of the warrant to him the said *John Cole* by the plea aforesaid above supposed to be made; and this he prays may be inquired of by the country.

*Nath. Wright,
Jo. Girdler,
Ed. Northey.*

And the aforesaid *Thomas, Richard, William, Thomas and John Cole* say, that the aforesaid plea of the said *John Groenvelt* in manner and form aforesaid above pleaded in reply, and the matter therein contained, are not sufficient in law for him the said *John Groenvelt* to have his said action thereof to be maintained against the said *Thomas, Richard, William, Thomas and John Cole*, to which said plea or replication of the said *John Groenvelt* in manner and form aforesaid pleaded, they the said *Thomas, Richard, William, Thomas and John Cole* have no necessity, neither are they bound by the law of the land in any manner to answer; whereupon for want of a sufficient replication of the aforesaid *John Groenvelt* in this behalf, they the said *Thomas, Richard, William, Thomas and John Cole* as before pray judgment, and that the aforesaid *John Groenvelt* may be barred from having his action aforesaid thereof against them the said *Thomas, Richard, William, Thomas and John Cole, &c.* And for causes of this demurrer in law upon the replication aforesaid they the said *Thomas, Richard, William, Thomas and John Cole* shew to the court here and say, that where the aforesaid *John Groenvelt* in his said replication says (amongst other things) that well and true it is that he for a long space of time, to wit, for the aforesaid five years was and as yet is a doctor of physick, &c. as they the aforesaid *Thomas, Richard, William, Thomas and John Cole* have above in pleading alledged, there sufficiently and manifestly appears to the court here that which is not alledged in the aforesaid plea of them the said *Thomas, Richard, William, Thomas and John Cole*, but they have only alledged thereupon that the aforesaid *John Groenvelt*

hath exercised and used for that time, and as yet doth exercise and use the art or faculty of physick, pretending himself to be very skilful in the same, which allegation differs much from that which the aforesaid *John Groenvelt* by his same replication doth suppose them to have made; and that the protestations of the aforesaid *John Groenvelt* are vain, void, and altogether superfluous, and the first of them is an imperfect sentence and deficient in sense, and the second of the same protestations is negative pregnant, ambiguous and uncertain; and also especially that the aforesaid *John Groenvelt* traverseth the virtue of the warrant aforesaid, which is not traversable, it being validity and matter of law, where he ought to traverse the making or the existence of the same warrant, or the delivery thereof to the said *John Cole*, &c. Further the aforesaid *John Groenvelt* traverseth or denies that they the said *Thomas, Richard, William, Thomas* and *John Cole*, that is to say all of them, by virtue of the warrant aforesaid did imprison him the said *John Groenvelt*, and tenders this for an issue, where they have above alledged that the said *John Cole* only by virtue of that warrant took the aforesaid *John Groenvelt* and delivered him into prison, and that they the said *Thomas, Richard, William* and *Thomas* made that warrant to him: and also the said traverse wants form for want of these words, to wit, (*without this*) or (*without such cause*) which in such traverses are used and ought to be put.

Joinder in demurrer.

And the aforesaid *John Groenvelt* saith that the plea aforesaid by him the said *John Groenvelt* in manner and form aforesaid above pleaded in reply, and the matter therein contained, are good and sufficient in law to have the aforesaid action of him the said *John Groenvelt* to be maintained against the said *Thomas, Richard, William, Thomas* and *John Cole*; which said plea, and the matter therein contained, he the said *John Groenvelt* is ready to verify and prove as the court, &c. And because the aforesaid *Thomas, Richard, William, Thomas* and *John Cole* do not answer to that replication, nor do hitherto in any wise deny it, he the said *John Groenvelt* prays judgment and his damages by occasion of the trespass, assault and imprisonment aforesaid to be adjudged to him. But because the court of the lord the king now here is not yet advised of giving their judgment of and concerning the premisses, day is given to the parties aforesaid, &c.

Entered

Entered of Hilary Term in the 9th Year of King William the Third. Roll 437.

Iveson against Moore and Others. 1 Ld. Raym. 486.

Yorkshire, **B**E it remembered that heretofore, to wit, in (to wit.) the term of Saint *Michael* last past before the lord the king at *Westminster* came *Henry Iveson* by *William Calvert* his attorney, and brought here in the court of the said lord the king then there his certain bill against *John Moore* esq; and *Ruth* his wife, *Samuel Wright*, *Jeremiah Colley*, *Henry Smith* and *Peter Clakey*, in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill followeth in these words, to wit, *Yorkshire*, to wit, *Henry Iveson* complains of *John Moore* esq; and *Ruth* his wife, *Samuel Wright*, *Jeremiah Colley*, *Henry Smith* and *Peter Clakey*, being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, for that, to wit, that whereas the said *Henry Iveson* on the 14th day of *May* in the ninth year of the reign of our lord *William* the third now king of *England*, &c. and long before and always afterwards until this time was possessed and as yet is possessed for a certain term of years, then and yet to come and unexpired, of and in a certain colliery and mine of coals, being under the soil and land, and in the bowels of a certain close or parcel of land situate and lying in the parish of *Whitkirke* otherwise *Whitchurch* in the county aforesaid, called *Whitkirke* otherwise *Whitchurch-fields*, and near adjacent to the king's common highway in the parish aforesaid, leading on the north part of the town of *Wetherby* in the county aforesaid in, by and over a certain moor there called *Winmore*, and from thence in, by and through a certain lane there called *Aulshaw-Lane*, and from thence in, by and through the village of *Whitkirke* otherwise *Whitchurch* aforesaid, and so back again, and also of and in a certain other colliery and mine of coals being under the soil and land and in the bowels of a certain close of moor or parcel of land in the parish aforesaid called *Halton Moor*, situate and lying and near adjacent to the king's common highway leading on the north part from the village of *Whitkirke* aforesaid, in, by and over the said moor called *Winmore*, and from thence in, by and through the lane aforesaid called *Aulshaw-Lane*, and from

Case for stopping a highway whereby the customers could not come to plaintiff's collieries, and his coals were spoiled.

thence in, by and through the village of *Halton* aforesaid in the county aforesaid, and so back again, in, by and through which said lane called *Aulshaw-Lane* the coals gotten and dug out of the said mines were used, and intended to be carried and conveyed from the closes aforesaid to the neighbouring and circumjacent places. And also whereas on the same 14th day of *May* the aforesaid *Henry Iveson* had a great quantity, to wit, two hundred cart-loads of coals dug out of the mines aforesaid in the several closes aforesaid ready to be exposed to sale, the aforesaid *John Ruth, Samuel, Jeremiah, Henry Smith* and *Peter* not being ignorant of the premises, but contriving and fraudulently and maliciously intending to hinder, deceive and deprive him the said *Henry* of the use and benefit of his said collieries, and the buyers of the coals dug out of the said collieries, to draw away and seduce from the said collieries, and to appropriate and procure them to, the colliery of the said *John Moore*, near adjacent in the parish aforesaid afterwards, to wit, on the said 14th day of *May* in the ninth year of the reign of the said lord the now king aforesaid did put and place four cart-loads of great stones and one root of a great ash in the said way at the parish aforesaid, and continued and permitted the stones and root of the ash aforesaid there to remain for the space of one month, by which said stones and root of the ash aforesaid the way aforesaid in, by and through the lane aforesaid was so much stopped up and obstructed that the carts and carriages for the carrying and conveying of the coals gotten and dug out of the collieries and mines aforesaid could not pass in, by and through the said way by the lane aforesaid, by which he the said *Henry Iveson* wholly lost the benefit, profit and advantage of his collieries aforesaid for the whole time aforesaid, and the coals gotten out of the collieries aforesaid for want of buyers so hindered and obstructed by the cause aforesaid became greatly damaged and of less price, to the damage of the said *Henry* of fifty pounds.

Plea, Not guilty.

Pleas before our Lord the King and our Lady the Queen at Westminster of the Term of Easter in the second Year of the Reign of our Lord William and our Lady Mary King and Queen of England, &c. Roll 53.

Payne against Partridge. 1 *Ld. Raym.* 493, 494.

Cambridgeshire, **B**E it remembered that heretofore, to wit, (to wit) **B** in the term of Saint *Michael* last past before our lord the king and our lady the queen at *Westminster* came *Isaac Payne* by *Humphrey Ambler* his attorney, and brought into the court of our said lord the king and lady the queen then there his certain bill against *Edward Partridge* esq; and *William Boulter* in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, to wit, *Cambridgeshire*, to wit, *Isaac Payne* complains of *Edward Partridge* esq; and *William Boulter*, being in the custody of the marshal of the *Marshalsea* of our lord the king and lady the queen, for that, (to wit) that whereas the town of *Littleport* within the isle of *Ely* in the county aforesaid is, and from all time whereof the memory of man is not to the contrary hath been an antient town; and whereas within the said town of *Littleport* aforesaid there is, and for all the same time there hath been an antient river called *Wilney River*, and upon the same river and across over the same for the whole time abovesaid there hath been an antient passage at the north-east side of the same town of *Littleport*, near the end of a lane called *Ferry-Lane*, leading from the town of *Littleport* aforesaid to the said river, for the passing and carrying over of the subjects of this realm of *England* willing to pass over and beyond that river, to wit, from a certain place called the *Ferry-Lane* on the north-east part thereof to a certain place called *Adventurous Bank*, on the north-east part of the same river across that river either forward or backward at their will, for the passing and carrying over of their horses, mares and geldings, which said passing and carrying over for the whole time abovesaid until of late, to wit, the first day of *May* in the 15th year of the reign of the lord *Charles* the second late king of *England*, &c. have been held and performed in
a certain

Declaration in case against the owners of a ferry boat for not keeping it in repair.

Prescription in a ferry and toll for passage.

Exception of
inhabitants in
ancient mes-
suages from
paying toll.

Prescription for
the exemption
of the said in-
habitants.

That the plain-
tiff is an inha-
bitant in an an-
cient messuage.

Breach in not
keeping a boat.

a certain ferry-boat kept by the owners and oecupiers of the said passage, and the owners, occupiers and keepers of the said passage and ferry-boat for the time being, for the better keeping and maintaining the same for the whole time aforesaid, have taken and been accustomed to take of the said subjects of this realm of *England* so to be passed and carried over and beyond the said river, to wit, from the said place called the *Ferry-Lane* to the said place called *Adventurous Bank* across the said river (other than of the inhabitants of the same town of *Littleport* resident in the ancient messuages or ancient cottages there) certain reasonable rates or toll or custom, that is to say, one halfpenny for every horse and man riding thereon, and for every led-horse, mare or gelding one farthing, and for every horse, mare or gelding otherwise loaded one penny, for such passing and carrying them over as before is set forth, to be had every time of their passing over beyond the river aforesaid at the passage aforesaid either backwards or forwards. And whereas also within the same town of *Littleport* there is had, and from the whole time aforesaid whereof the memory of man is not to the contrary there hath been had such an ancient custom, that is to say, that the inhabitants of that town resident in the ancient messuages or ancient cottages there, have had and might have, and for the whole time aforesaid have been accustomed to have liberty of passing over the said river at the passage aforesaid there for themselves, their horses, mares and geldings in the ferry-boat aforesaid, so as before is set forth, to be carried over either forwards or backwards at their liberty, without any payment whatsoever so to be had for such their liberty over; and also whereas he the said *Isaac* on the first day of *May* in the second year of the reign of our lord *James* the second late king of *England*, &c. and long before and from thence afterwards until this time hath been and as yet is one of the inhabitants of the said town of *Littleport*, in a certain ancient messuage there then and as yet resident, and for that cause and reason he the said *Isaac* by virtue of the said custom hath had and ought to have the liberty of passing over the said river at the passage aforesaid in the said ferry-boat for himself, his horses, mares and geldings in form aforesaid, without any payment whatsoever to be made for the same: nevertheless the said *Edward* and *William* not being ignorant of the premises, but contriving and maliciously intending him the said *Isaac* unjustly to aggrieve, and greatly to damnify and to deprive him of the liberty of his aforesaid passing over the said river at the passage aforesaid to be had in the said ferry-boat as before is set forth, and also to cause him the said *Isaac* wholly to lose the

the same, on the said first day of *May* in the second year above said, and from thence until the day of exhibiting the said bill of him the said *Isaac* (they the said *Edward* and *William* being then and before and afterwards until this time owners, occupiers and keepers of the passage and ferry-boat aforesaid) had preserved or kept no ferry-boat at the said passage for the passing over of the subjects of this realm, and of their horses, mares and geldings aforesaid, willing to pass over and beyond that river, but have for the time aforesaid wholly omitted and neglected to do, have, preserve or keep the same, and no ferry-boat there for the time aforesaid, or any part of that time hath been, or as yet is there, although the said *Edward* and *William* on the said first day of *May* in the second year above said and often afterwards at *Littleport* aforesaid were requested by the said *Isaac* to have such ferry-boat at the passage aforesaid, and to permit him the said *Isaac* to have his said liberty there, so that he the said *Isaac* from the said first day of *May* in the second year above said and from thence until this time hath been and as yet is hindered and wholly deprived of his liberty of passing over the river aforesaid at the said passage in form aforesaid to be had, according to the custom aforesaid contrary to the said custom, to the damage of the said *Isaac* of 500*l.* and thereupon he brings suit, &c.

And now at this day, to wit, *Wednesday* next after fifteen days of *Easter* in this same term, until which day the said *Edward* and *William* had leave to imparl to the said bill and then to answer, &c. before our lord the king and lady the queen at *Westminster* cometh as well the said *Isaac* by his attorney aforesaid as the said *Edward* and *William* by *Joseph Sherwood* their attorney; and the said *Edward* and *William* defend the force and injury when, &c. and say that the aforesaid *Isaac* ought not to have or maintain his said action thereupon against them, because protesting that the passing and carrying of persons, horses, mares and geldings over and beyond the said river have not been had or done in any ferry-boat kept for the passing and carrying over of persons or cattle in the place where, and in manner and form as by the declaration aforesaid is above supposed; and protesting that within the said town of *Littleport* there is not, nor ever hath been such a custom as in the declaration aforesaid is above supposed and alledged; and protesting also that the said *Isaac* is not, nor ever hath been one of the inhabitants of the said town of *Littleport* resident in any antient messuage there, in manner and form as by the said declaration is above supposed, for plea they the said *Edward* and *William* say that long before the said time in which, &c. to

Impar lance.

Protestation that the passage was not in a boat.

Further protestation that there is no such custom, and that plaintiff is not an inhabitant.

Wit,

Plea that defendants have built a bridge and kept it in repair,

wit, on the first day of *May* in the 15th year of the reign of the said late king *Charles* the second aforesaid, he the said *Edward* at his own proper costs and charges erected, built and placed in and upon the said river and over the same river at the passage aforesaid a certain bridge made of wood and stones for the use, easement, passing, carrying over of all and every of the persons, horses, mares and geldings there coming and willing to pass over and beyond the said river at the passage aforesaid, which said bridge so erected and placed there, he the said *Edward* from time to time and at all times after the making thereof until this time hath there well and sufficiently had, preserved and maintained, repaired and kept, so that he the said *Isaac*, and all and every the persons, horses, mares and geldings there coming and willing to pass over and beyond the said river at the passage aforesaid from time to time and at all times after the making and placing of the said bridge there until this time might and as yet may there go, return and pass upon the said bridge over and beyond the said river without any danger at the passage aforesaid, more safely, better and more speedily than in a ferry-boat; for which reason they the said *Edward* and *William* had preserved or kept no ferry-boat at the said passage, but have omitted and neglected to do, have, preserve or keep the same, as it was lawful for them for the cause aforesaid; and this they are ready to verify: wherefore they pray judgment if the said *Isaac* ought to have or maintain his said action thereof against them, &c.

for which reason they omitted to keep the boat.

Reply, that he was not permitted to pass over any bridge.

And the said *Isaac* saith that he by any thing by the said *Edward* and *William* above alledged ought not to be barred from having his said action thereof against them, because he the said *Isaac* saith that he was not permitted to have the liberty of the passage aforesaid by any bridge over and beyond the river aforesaid, according to the custom in the declaration aforesaid mentioned, contrary to the custom aforesaid; and this he is ready to verify: wherefore he prays judgment and his damages by occasion of the premisses to be adjudged to him, &c.

Demurrer.

And the said *Edward* and *William* say that the plea aforesaid by the said *Isaac* in manner and form aforesaid above pleaded in reply, and the matter in the same contained, are not sufficient in law to have and maintain the said action of him the said *Isaac* against them the said *Edward* and *William*, to which they the said *Edward* and *William* have no necessity, nor are bound by the law of the land to answer in any manner; and this they are ready to verify: wherefore for want of a sufficient replication in this behalf, they the said *Edward* and *William* as before pray judgment, and that

that the said *Isaac* may be barred from having his said action against them the said *Edward* and *William*, &c.

And the said *Isaac* saith that the plea aforesaid by him the said *Isaac* in manner and form aforesaid above pleaded in reply, and the matter in the same contained, are good and sufficient in law to have and maintain the said action of him the said *Isaac* against them the said *Edward* and *William*; which said plea and the matter in the same contained, he the said *Isaac* is ready to verify and prove as the court, &c. And because the said *Edward* and *William* do not answer to that plea, nor hitherto in any manner deny it, he the said *Isaac*, as before prays judgment, and his damages by occasion of the premisses to be adjudged to him, &c. But because the court of the said lord the king and lady the queen now here are not yet advised of giving their judgment of and upon the premisses, day is thereupon given to the parties aforesaid before the lord the king and lady the queen at *Westminster* aforesaid until *Friday* next after the morrow of the Holy *Trinity* to hear their judgment of and upon the premisses, for that the court of the said lord the king and lady the queen now here are thereof not yet, &c. At which day before the lord the king and lady the queen at *Westminster* come the said parties by their attornies aforesaid: but because the court of our said lord the king and lady the queen are not yet advised, (in like manner the entry is continued down until the first day of the next *Trinity* term by several continuances of *curia advisare vult*) at which day before the lord the king and lady the queen at *Westminster* come the said parties by their attornies aforesaid; upon which all and singular the premisses being seen and more fully understood by the court of the said lord the king and lady the queen now here, and mature deliberation being thereupon had, it seems to the court of the said lord the king and lady the queen now here that the aforesaid plea by the said *Isaac* in manner and form aforesaid above pleaded in reply, and the matter in the same contained, are not sufficient in law to have and maintain the said action of him the said *Isaac* against the said *Edward* and *William*, therefore it is considered that the said *Isaac* take nothing by his said bill, but for his false complaint he be in mercy, &c. and that the said *Edward* and *William* go without day thereupon, &c.

Joinder in
demurrer.

Continuances
by curia advisare
vult.

Judgment for
the defendants.

Pleas before the Lord the King at Westminster of the Term of the Holy Trinity in the tenth Year of the Reign of our Lord William the Third now King of England, &c. Roll 162.

Robins against Robins. 1 Ld. Raym. 503.

Declaration in case for arresting defendant and holding him to bail upon mesne process, where no bail was required by law.

Cornwal, **B**E it remembered that heretofore, to wit, in the (to wit) term of *Easter* last past before our lord the king at *Westminster* came *Stephen Robins* gent. by *Edward Hoblyn* his attorney, and brought into the court of the said lord the king then there his certain bill against *John Robins* gent. in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill followeth in these words, to wit, *Cornwal*, to wit, *Stephen Robins* gent. complains of *John Robins* gent. being in the custody of the marshal of the *Marshalsea* of our lord the king before the king himself, for that, to wit, that whereas the said *John* never had any lawful cause of action against him the said *Stephen*, so that by the law of this realm of *England* the body of him the said *Stephen* ought therefore to be taken and detained in prison until he the said *Stephen* should find sufficient bail to answer to him the said *John* in the same cause: nevertheless the said *John* well knowing the premisses, but contriving and maliciously intending him the said *Stephen* unjustly to aggrieve, oppress and damnify in this behalf, and to impair and take away his credit and reputation as much as in him laid, he the said *John* on the 28th day of *May* in the ninth year of the reign of our lord *William* the third now king of *England*, &c. at *Bodmyn* in the county aforesaid, by pretence and colour of certain mesne process in law caused the said *Stephen* to be arrested, and although he the said *Stephen* was always ready to appear upon such process at the day of the return thereof to answer to him the said *John* according to the exigency of the same process, nevertheless the said *John* on the day and year aforesaid at *Bodmyn* aforesaid maliciously procured and caused the said *Stephen* to be imprisoned, and to be there detained in prison for the space of six months, for that only, because the aforesaid *Stephen* could not find sufficient bail to answer to him the said *John* upon the process aforesaid, by which the said *Stephen*

Stephen was forced to expend great sums of money for his maintenance in prison aforesaid, and the necessary business of him the said *Stephen* for that time remained undone, and he the said *Stephen* in his manner of living was greatly injured, to the great disturbance of his mind, and to the manifest hurting of his fame and credit; whereupon the aforesaid *Stephen* saith that he is injured, and hath sustained damage to the value of thirty pounds, and thereupon he brings suit, &c.

And now at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, until which day the aforesaid *Stephen* had leave to imparl to the bill aforesaid and then to answer, &c. before the lord the king at *Westminster* cometh as well the said *Stephen* by his attorney aforesaid as the aforesaid *John* by *Joseph Sherwood* his attorney; and the said *John* defends the force and injury when, &c. and saith that he is not guilty thereof; and of this he puts himself upon the country, and the said *Stephen* thereof likewise: therefore let a jury thereupon come before the lord the king at *Westminster* on *Wednesday* next after three weeks of the Holy *Trinity*, and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Nota; The above declaration having been adjudged to be bad as appears by the Report, here follows a declaration for the like cause of action which is a good one, and was so determined to be, in the third year of king George the third.

Worcestershire, *A.* T. spinster, complains of *W. M.* being (to wit) in the custody of the marshal of the *Marshalsea* of our sovereign lord the king before the king himself, for that the said *W. M.* maliciously and injuriously contriving and intending to oppress, aggrieve and injure the said *A.* and to cause her the said *A.* to be unjustly arrested and imprisoned for a large sum of money, and not only to deprive the said *A.* of her liberty, and to hinder her from going about her lawful affairs and business, but also to cause her the said *A.* without any just or reasonable cause to expend divers large sums of money on that occasion, in the term of the Holy *Trinity* which was in the year of our Lord 1761 did falsely, unjustly and maliciously prosecute and cause to be prosecuted out of the court of our said lord the king before the king himself (the same court being then and now here, to wit, at *Westminster* in the county of *Middlesex*) a certain writ of our said lord the king called a *latitat*, directed to the then sheriff of *Worcestershire*, by which said

Declaration for arresting and holding defendant to special bail in a case where no special bail was required by the course of the court.

Sets out the writ of *latitat*.
writ

writ the said then sheriff of *Worcestershire* was commanded that he should take the said *A.* and one *John Doe*, if they should be found in his bailiwick, and that he should keep them safely so that he might have their bodies before the said lord the king at *Westminster* on *Friday* next after the morrow of *All Souls* then next ensuing to answer to the said *W. M.* in a plea of trespass, and also to a bill of him the said *W.* against the said *A.* for twenty pounds upon promises, according to the custom of the court of our said lord the king before the king himself to be exhibited, and that the said sheriff should then have there that writ; upon which said writ the said *W. M.* afterwards, to wit, on the thirteenth day of *October* in the year aforesaid unjustly and maliciously caused to be indorsed that the said sheriff should take bail in that suit for thirteen pounds, to wit, at *Shipston upon Stower* in the said county of *Worcester*, by colour and pretext of which said writ so indorsed as aforesaid the said *W. M.* afterwards and before the return of that writ, that is to say, on the twenty-sixth day of *October* in the said year of our Lord 1761 at *Shipston upon Stower* aforesaid in the said county of *Worcester* unjustly and maliciously caused and procured the said *A.* to be arrested and imprisoned, and to be kept and detained in prison there for want of bail for the appearance of the said *A.* to that suit for a long space of time, that is to say, from thence until the third day of *December* then next ensuing, when she the said *A.* was discharged from the said imprisonment upon her finding bail in the suit aforesaid, which she the said *A.* was forced and obliged to do, whereas in truth and in fact she the said *A.* at the time of the prosecution of the said writ, and at the time of the said arrest and imprisonment of her the said *A.* aforesaid, or at either of those times was not indebted to the said *W. M.* in the said sum of thirteen pounds, nor in any sum of money for which she the said *A.* ought to have been arrested or imprisoned or held to bail as aforesaid; nor had the said *W. M.* at either of those times any cause of action or suit against the said *A.* for any sum or sums of money for which she the said *A.* ought according to the course and practice of the said court of our said lord the king before the king himself to be compelled to find or put in special bail in that suit, as by the said writ so unjustly and maliciously prosecuted as aforesaid she the said *A.* was compelled to do. And the said *A.* further saith that the said suit of the said *W. M.* is now wholly ended and determined, by reason of which premises the said *A.* hath not only been deprived of her liberty, and hindered and obstructed in carrying on and transacting her lawful affairs and business during the

which was indorsed to take bail for 13 l.

and the defendant was thereupon arrested,

and forced to give special bail.

Averment that defendant was not indebted in any sum for which she ought to have been arrested.

Averment that the said suit is ended.

The *Grovamen.*

the time above mentioned in this behalf, but also was compelled and under a necessity to expend and lay out, and did actually lay out and expend divers large sums of money as well for her the said *A.*'s maintenance and support during her said confinement and imprisonment, as also for her the said *A.*'s enlargement and discharge therefrom, to wit, at *Shipston upon Stower* aforesaid in the county of *Worcester* aforesaid, to the damage of the said *A.* of five hundred pounds, and therefore she brings suit, &c.

Pledges to prosecute, { *John Doe,*
and
Richard Roe.

Pleas before the Lord the King at Westminster of the Term of Saint Michael in the 11th Year of the Reign of our Lord William the Third, now King of England, &c. Roll 377.

The Bishop of Salisbury against Phillips. 1 Ld. Raym. 535.

THE lord the king hath sent to his beloved and faithful *George Treby*, knt. his chief justice of the bench, his writ close in these words, to wit, *William* the third by the grace of God of *England, Scotland, France and Ireland* king, defender of the faith, &c. to his beloved and faithful *George Treby*, knt. his chief justice of the bench greeting: forasmuch as in the record and process, and also in the giving off judgment of the plaint which was in our court before you and your companions, our justices of the bench aforesaid, by our writ between *William Phillips* executor of the will of *William Phillips* gent. his father lately deceased, and *Gilbert* bishop of *Salisbury* and *John Berrow* clerk, for that they the said bishop should permit him the said *William Phillips* the then plaintiff to present a fit person to the church of *Stanton*, otherwise *Stanton Fitzwarren*, otherwise *Stanton Fitzherbert* in the county of *Wilts*, which was void and did belong to his gift, as it was said manifest error hath intervened, to the great damage of them the said bishop and *John*, as by their complaint we are informed: we willing that the error (if any hath been) be in due manner corrected, and full and speedy justice be done to them the said bishop and *John* in this behalf, do command you that if judgment

Writ of error in
quare impedit.

One mediety
defends.

Covenant to
stand seised.

In consideration
of blood.

Of one mediety
to the use of
R. H. in tail,
remainder in
tail to *R. H.*
remainder to
the use of the
covenantor in
fee.

presented one *Thomas Hotchkis* his clerk to the said church being so void, as in the second turn, who upon the presentation of him the said *John Organ* was admitted and instituted in the same in the time of peace in the time of the lord *Charles* the first late king of *England*, &c. And the aforesaid *Richard Organ* and *John Organ* being so seised of the advowson aforesaid, the aforesaid *Richard Organ* afterwards at *Stanton* aforesaid died seised of such his estate thereof, by and after whose death a mediety of the advowson aforesaid descended to one *John Organ* as brother and heir of the said *Richard Organ*, by which the same *John Organ* the brother was seised of the mediety of the advowson aforesaid as of fee and right to present in form aforesaid; and being so seised thereof afterwards, to wit, on the 25th day of *August* in the 14th year of the reign of the said late king *Charles* the first, by a certain indenture made between him the said *John Organ* of the one part, and *Richard Hippesley* of *Stone Easton* in the county of *Somerset* gent. nephew of the said *John Organ* the brother, that is to say, the second son of *Elizabeth Hippesley* widow, the natural sister of the said *John Organ* the brother, of the other part, at *Stanton* aforesaid in the county aforesaid; the counterpart whereof sealed with the seal of the aforesaid *John Organ* the brother he the said *William Phillips* the now plaintiff brings here into court, the date whereof is the same day and year abovesaid; and in consideration of the natural love and affection which he had and bore towards the said *Richard Hippesley*, and in consideration of the blood between them, and for the better preferment and advancement, maintenance and livelihood of the said *Richard Hippesley* and his brother in the same indenture afterwards named, he the said *John Organ* the brother for himself and his heirs covenanted, granted and agreed to and with the said *Richard Hippesley* and his heirs, that he the said *John Organ* the brother, his heirs and assigns, and every of them, and all and every other person and persons and their heirs, who then were or from thence afterwards should stand and be seised of and in the said mediety of the advowson aforesaid, should stand and be seised of the same, to the use and behoof of the said *Richard Hippesley* and the heirs of the body of the said *Richard Hippesley* lawfully to be begotten; and for want of such issue, to the use and behoof of *Robert Hippesley* the brother of him the said *Richard Hippesley* and the heirs of the body of the said *Robert Hippesley* lawfully to be begotten; and for want of such issue to the use and behoof of the said *John Organ* the brother and his heirs and assigns for ever, and to no other uses, intents or purposes whatsoever, as by the indenture aforesaid last mentioned

more

more fully appears; by virtue of which said indenture, and by force of a certain act made and provided in the parliament of the lord *Henry* the eighth late king of *England*, holden at *Westminster* in the county of *Middlesex* on the fourth day of *February* in the 27th year of his reign, for transferring uses into possession, the aforesaid *Richard Hippesley* was seised of the mediety of the advowson aforesaid as of fee tail and right, the remainder thereof in form aforesaid, to wit, to present in form aforesaid; and the aforesaid *Richard Hippesley* being so seised thereof afterwards at *Stanton* aforesaid in the county aforesaid died, by and after whose death the said mediety of the advowson aforesaid descended to one *Richard Hippesley* esq; as son and heir of the body of the aforesaid *Richard Hippesley*, by which he the said *Richard Hippesley* the son was seised of the said mediety of the advowson aforesaid as of fee tail and right; and the said *Richard Hippesley* the son being so seised thereof afterwards at *Stanton* aforesaid died without issue of his body issuing, by and after whose death the said mediety of the advowson afterwards descended to one *John Hippesley* esq; as the other son and heir of the body of the aforesaid *Richard Hippesley* first named, by which the said *John Hippesley* was seised of the said mediety of the advowson aforesaid as of fee and right; and the said *John Hippesley* being so seised thereof, he the said *John Hippesley* afterwards, to wit, on the 16th day of *January* in the 24th year of the reign of the lord *Charles* the second late king of *England*, &c. at *Stanton* aforesaid in the county aforesaid, by his certain writing which he the said *William Phillips* the now plaintiff (sealed with the seal of the aforesaid *John Hippesley*) brings here into court, the date whereof is the same day and year, gave and granted to *Francis Symes* the elder of *Kelmscot* in the county of *Oxford* gent. and to *William Phillips* the testator of *Eaton Hastings* in the county of *Berks* gent. their executors and assigns, the first and next advowson, donation, nomination, presentation and free disposition of the aforesaid parish church of *Stanton*, otherwise called *Stanton Fitzherbert*, otherwise *Stanton Fitzwarren*, willing and by his same writing granting that it should and might be lawful to and for the said *Francis Symes* and *William Phillips* the testator, their executors and assigns, to present to the said church of *Stanton Fitzherbert*, otherwise *Stanton Fitzwarren*, whensoever or howsoever by death, resignation, deprivation, cession, permutation, dismissal, or in any other manner by which the same church should then first and next happen to be void, any honest and learned clerk for the then next turn only, as by the writing aforesaid more fully appears;

Descent in tail.

Second descent in tail to R. H.

who made a grant of the next avoidance to the testator and F. S. the executors and assigns.

F. S. one of the grantees of the turn dies, and the plaintiff's testator survives.

Avoidance in testator's life-time by death.

And it belonged to testator in his life-time to present, but defendants hindered him,

who made his will, and the plaintiff his executor,

who proved the will, &c. and so it belongs to the plaintiff to present.

Averment that the grantor is living, and the identity of the church.

by virtue of which grant they the said *Francis Symes* and *William Phillips* the testator were possessed of the advowson of the church of *Stanton* aforesaid, that is to say, to present to the same church when then first and next it should happen to be void; and being so possessed thereof, the aforesaid *Francis Symes* afterwards at *Stanton* aforesaid in the county aforesaid died, and the said *William Phillips* the testator survived and was alone possessed of the advowson aforesaid by right of survivorship, &c. And the aforesaid *William Phillips* the testator being so possessed thereof, the church aforesaid in the life of the aforesaid *William Phillips* the testator became void by the death of the aforesaid *Thomas Hotchkis*, and as yet is void, which said avoidance of the church aforesaid by the death of the aforesaid *Thomas Hotchkis* is the first and next avoidance of the church aforesaid after the grant aforesaid made to them the said *Francis Symes* and *William Phillips* by the aforesaid *John Hippesey* in form aforesaid, and for that reason it belonged to the said *William Phillips* the testator in his life-time to present a fit person to the church aforesaid so being void; and the aforesaid bishop and *John Berrow* unjustly hindered him the said *William Phillips* the testator, and the aforesaid *William Phillips* the testator (the church aforesaid being so void as before is set forth) afterwards, to wit, on the 21st day of *June* in the sixth year of the reign of our lord the now king and of the lady *Mary* the late queen of *England*, &c. at *Stanton* aforesaid in the county aforesaid made his last will and testament, and by the same constituted and ordained the aforesaid *William Phillips* the now plaintiff executor of his will aforesaid, and afterwards there died, after the death of which said *William Phillips* the testator the aforesaid *William Phillips* the now plaintiff took upon himself the burthen and execution of the will aforesaid, and hath proved that will in due form of law, to wit, at *Stanton* aforesaid, and for that reason at present it belongs to him the said *William Phillips* the now plaintiff to present a fit person to the church aforesaid so void, and the aforesaid bishop and *John Berrow* unjustly disturb [hinder] him the said *William Phillips* the now plaintiff; whereupon he the said *William Phillips* the now plaintiff saith that he is injured, and hath sustained damage to the value of six hundred pounds, and thereupon he brings suit, &c. with this, that he the said *William Phillips* the now plaintiff will verify that the aforesaid *John Hippesey* is still living and in full life, to wit, at *Stanton* aforesaid in the county aforesaid, and that the church of *Stanton*, otherwise *Stanton Fitzwarren*, otherwise *Stanton Fitzherbert*, is one and the same church, and not another

nor

not different; and he brings here into court the letters testamentary of the aforesaid *William Phillips* the testator, by which it sufficiently appears to the court here that he the said *William Phillips* the now plaintiff is executor of the will aforesaid, and hath the administration thereof, &c.

Protest of the will.

And the aforesaid *Gilbert* bishop of *Salisbury* and *John Berrow* clerk, by *John Carpenter* their attorney come and defend the force and injury when, &c. And the aforesaid *John Berrow* saith that he is parson imparsonnee of the church aforesaid of the collation of the aforesaid bishop; and the aforesaid bishop and *John Berrow* further say that the aforesaid *William Phillips* the executor ought not to have his action aforesaid against them, because they say that the aforesaid church of *Stanton*, otherwise *Stanton Fitzwarren*, otherwise *Stanton Fitzherbert*, became void by the death of the aforesaid *Thomas Hotchkis* on the 20th day of *September* in the year of our Lord 1693, and was so void until the 23d day of *April* in the year of our Lord 1694, upon which day at *Stanton* aforesaid the aforesaid bishop, because at that time six months after the avoidance of the same church were fully elapsed and devolved, being the ordinary of that place, collated the aforesaid *John Berrow* to that church then being void, as it was well and lawful for him; and this they are ready to verify: whereupon they pray judgment if the aforesaid *William* the executor ought to have his said action against them, &c.

Plea, parson imparsonnee, defendants admit the avoidance, and the bishop collated by lapse.

And the aforesaid *William Phillips* the executor saith that he by any thing above alledged ought not to be barred from having his action aforesaid, because he saith that well and true it is that the aforesaid church of *Stanton*, otherwise *Stanton Fitzwarren*, otherwise *Stanton Fitzherbert* aforesaid, became void by the death of the aforesaid *Thomas Hotchkis* on the aforesaid 20th day of *September* in the year of our Lord 1693 above said, as the aforesaid bishop and *John Berrow* in pleading have alledged. But he the said *William Phillips* the executor further saith that after the aforesaid 20th day of *September* in the year of our Lord 1693 above said and before the said 23d day of *April* in the year of our Lord 1694 within six months after the death of the aforesaid *Thomas Hotchkis*, that is to say, on the 16th day of *October* in the year of our Lord 1693 the aforesaid *William Phillips* the testator by his writing sealed with his seal, the date whereof is the same 16th day of *October* in the year of our Lord 1693 at *Stanton* aforesaid in the county aforesaid presented one *John Symes*, master of arts, his clerk, to the aforesaid bishop, being then the ordinary of the aforesaid place of *Stanton*, otherwise *Stanton Fitzwarren*,

Replication, admits the time of the avoidance, but says that within 6 months the testator by writing presented J. S. and requested the bishop to admit him, who refused.

otherwise *Stanton Fitzherbert*, and then and there requested the aforesaid bishop to admit and institute him the said *John Symes* to the church aforesaid so being void by the death of the aforesaid *Thomas Hotchkis*, which said *John Symes* the aforesaid bishop then and there absolutely refused to admit and institute to the church aforesaid upon the aforesaid presentation of the said *William Phillips* the testator, and hindered him the said *William Phillips* the testator to present; and this he is ready to verify; whereupon he prays judgment and his damages by occasion of the hindrance [or disturbance] aforesaid, and also a writ to the aforesaid bishop, to be adjudged to him, &c.

Rejoinder admits the presentation, but says that *J. S.* took it away and desired time to prepare himself for examination, and never came again to be examined,

And the aforesaid bishop and *John Berrow* say that well and true it is that the aforesaid *William Phillips* the testator, by his writing sealed with his seal, presented the aforesaid *John Symes*, as he the said *William* the executor above in replying hath alledged: but they the said bishop and *John Berrow* further say that afterwards and within six months after the avoidance of the church aforesaid, that is to say, on the aforesaid 16th day of *October* in the year of our Lord 1693 aforesaid, the aforesaid *John Symes* at *Stanton* aforesaid brought the presentation aforesaid to the aforesaid bishop, and requested the aforesaid bishop to give the said *John Symes* a few days to prepare himself to be examined of his sufficiency in literature to have the church aforesaid, and that the aforesaid bishop thereupon, upon the request of the aforesaid *John Symes*, then and there gave leave to the aforesaid *John Symes* to go away and there to return to the aforesaid bishop within three days next following to be examined of his sufficiency aforesaid, which said three days were ended long before the end of six months after the avoidance of the church aforesaid by the death of the aforesaid *Thomas Hotchkis*, that is to say, by the space of one month, to wit, at *Stanton* aforesaid. And the aforesaid bishop and *John Berrow* further say that he the said bishop for the aforesaid three days afterwards there was ready to examine the aforesaid *John Symes* of his sufficiency aforesaid, and that the aforesaid *John Symes* neither within the aforesaid three days nor ever afterwards came again, nor offered himself to the aforesaid bishop to be examined of his sufficiency aforesaid, by which the aforesaid church remained void for the space of six months and upwards after the aforesaid avoidance by the death of the aforesaid *Thomas Hotchkis*, upon which he the said bishop collated the aforesaid *John Berrow* to that church so void, which said *John Berrow* was inducted in the same church in due form of law; without this, that the aforesaid

so the bishop collated *J. B.* the other defendant,

bishop

bishop absolutely refused to admit and institute the aforefaid *John Symes* to the church aforefaid upon the presentation of the aforefaid *William Phillips* the testator, as the aforefaid *William Phillips* the executor hath above alledged; and this they are ready to verify: whereupon they pray judgment, and that the aforefaid *William* the executor may be barred from his action aforefaid, &c.

and traverses
that he refused
to admit J. S.

And the aforefaid *William Phillips* the executor as before saith, that the aforefaid bishop absolutely refused to admit and institute the aforefaid *John Symes* to the church aforefaid upon the presentation of the aforefaid *William Phillips* the testator, as the aforefaid *William Phillips* the executor hath above in replying alledged; and he prays that this may be inquired of by the country, and the aforefaid bishop and *John Berrow* likewise, &c. therefore the sheriff is commanded that he cause to come here from the day of the Holy *Trinity* in three weeks twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. At which day the parties come here, &c. and the sheriff hath not sent the writ, therefore as before the sheriff is commanded that he cause to come here from the day of Saint *Michael* in three weeks twelve, &c. to recognize in form aforefaid, &c. At which day here come the parties aforefaid, &c. and the sheriff hath not sent the writ; therefore as before the sheriff is commanded that he cause to come here in eight days of the purification of the blessed *Mary* twelve, &c. to recognize in form aforefaid, &c. At which day the jury between the parties aforefaid of the plea aforefaid was thereupon respited between them here until this day, that is to say, from the day of *Easter* in fifteen days then next following, unless the justices of our lord the king assigned to take the assizes in the county aforefaid by form of the statute, &c. on *Saturday* the 11th day of *March* next, past, at *New Sarum* in the county aforefaid before come; and now here at this day comes the aforefaid *William* by his attorney aforefaid; and the aforefaid justices assigned to take the assizes before, &c. have sent here their record in these words, (to wit) Afterwards on the day and at the place within contained before *Thomas Rokeby* knt. one of the justices of the lord the king assigned to hold pleas before the king himself, and *John Powell* knt. one of the justices of the said lord the king of the bench, justices of him the said lord the king assigned to take the assizes in the county of *Wilts* by form of the statute, &c. came as well the within named *William Phillips* gent. the executor of the last will and testament of *William Phillips* gent. his father lately deceased, as the within written *Gilbert* bishop of *Salisbury* and *John*

Surrejoinder
and issue upon
the traverse.

Venire facias
awarded.

The sheriff
non misit breve.

Nisi prius.

Posse returned.

Verdict that the bishop refused to admit J. S. upon the plaintiff's testator's presentation.

And that the church is full of the collation of the bishop, and is of the yearly value of £20 l. and assesses 40 s. costs, which are not respected, there being no cost by law in *Quare Imp. Judgment*,

and a writ to the archbishop awarded.

Mercy.
Errors assigned.

John Berrow clerk, by their attornies within contained; and the jurors of the jury whereof mention is within made, being called likewise came, who being chosen, tried and sworn to speak the truth of the matter within contained, say upon their oath that the aforesaid *Gilbert* bishop of *Salisbury* within named absolutely refused to admit and institute the aforesaid *John Symes* to the church within mentioned upon the presentation of the aforesaid *William Phillips* the testator, as the aforesaid *William Phillips* the executor hath within in replying thereupon alledged. And the jurors aforesaid upon their oath further say that the church aforesaid is full of the aforesaid *John Berrow* of the collation of the aforesaid *Gilbert* bishop of *Salisbury*, as by him is within alledged, and that the church aforesaid is and at the time when, &c. was of the value of £20 l. by the year in all issues beyond reprises; and the jurors aforesaid assess the damages of him the said *William Phillips* the executor for his costs and charges by him laid out about his suit in this behalf to forty shillings, therefore no respect being had to the aforesaid forty shillings of the damages, costs and charges aforesaid by the jury aforesaid by occasion of the hindrance [disturbance] aforesaid assessed, because such damages or costs by the law of the land in this case are in no wise to be adjudged, it is considered that the said *William Phillips* the executor do recover against the aforesaid bishop of *Salisbury* and *John Berrow* his presentation to the church aforesaid, and his damages to the value of that church for the half of one year, which in themselves amount to sixty pounds by the jury aforesaid in form aforesaid assessed; and let him have a writ to the archbishop of *Canterbury*, primate of all *England* and metropolitan of that place (for that the aforesaid bishop of *Salisbury* is a party, &c. because the said *John Berrow* is admitted and instituted to the same church upon the collation of the aforesaid bishop of *Salisbury*, and is inducted in the same) to remove the aforesaid *John Berrow* from that church, and to admit a fit person to the said church upon the presentation of the aforesaid *William Phillips* the executor; and the aforesaid bishop of *Salisbury* and *John Berrow* in mercy, &c. Afterward, that is to say, on *Monday* next after three weeks of *Saint Michael* in this same term before the lord the king at *Westminster* come the aforesaid bishop and *John Berrow* by *Adrian Moore* their attorney, and say that in the record and process aforesaid, and also in the giving of the judgment aforesaid, there is manifest error in this, (to wit) that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given was given for the aforesaid *William Phillips* against the aforesaid bishop and *John Berrow*, where by the law of the land

land of this realm of *England* that judgment ought to have been given for the aforesaid bishop and *John Berrow* against him the said *William Phillips*, therefore in that there is manifest error; there is also error in this, (to wit) that the record aforesaid now here sent before our lord the king is defective in this, (to wit) that the original writ, and the return of the same between the parties aforesaid in the plea aforesaid are wholly omitted out of that record, and as yet remain in the custody of the keeper of the writs of the lord the now king of the bench not certified to him the said lord the king; and they the said bishop and *John Berrow* pray a writ of the said lord the now king to be directed to the keeper of the writs of our said lord the now king of the bench aforesaid to certify the writ aforesaid, together with the return of the same writ to the said lord the king, and it is granted to them &c. By which it is commanded to *William Thursby* esq; keeper of the writs of the lord the king of the bench aforesaid, that having searched the original writs of the county of *Wilts* of the term of the Holy Trinity in the eighth year of the reign of the said lord the now king being in his custody of record, he do send without delay what he shall find in the same concerning the writ aforesaid, together with the whole return of the same writ as fully and intirely as they remain in his custody to the lord the king wheresoever, &c. together with the writ of the said lord the king to him thereupon directed, &c. which said keeper of the writs by virtue of that writ to him thereupon directed hath certified to him the said lord the king, that, having searched the original writs of his county of *Wilts* of the aforesaid term of the Holy Trinity in the eighth year of his reign assiled of record in his custody, there is had a certain original writ between the parties aforesaid of the plea aforesaid in his custody assiled of the aforesaid term, the tenor of which said writ, together with the return of the same, follows in these words, *William* the third by the grace of God of *England, Scotland, France and Ireland* king, defender of the faith, &c. To the sheriff of *Wiltshire*, greeting: command *Gilbert* bishop of *Salisbury* and *John Berrow* clerk, that justly and without delay they permit *William Phillips* executor of the will of *William Phillips* his father lately deceased, to present a fit person to the church of *Stanton*, which is void and belongs to his gift as he saith; and whereupon he complains that the aforesaid bishop and *John* unjustly hinder [disturb] him, and unless they will do this, and the aforesaid executor shall make you secure of prosecuting his claim, then summon by good summoners the

Diminution
alleged.

Certiorari to the
Custos Brevium
of C. B.

to search for
and send the
original to the
king's bench.

The original
writ and the
return thereof.

the aforesaid bishop and *John*, that they be before our justices at *Westminster* from the day of the Holy *Trinity* in fifteen days, to shew why they will not do this; and have you there the summoners and this writ. Witness *Thomas* archbishop of *Canterbury*, and the rest of the keepers and justices of the realm at *Westminster* the 28th day of *May* in the 8th year of our reign. *Hale*. Essoin for the bishop, adjourned for the bishop until three weeks from the day of Saint *Michael*, the same day, for the clerk, of essoin. For the clerk, adjourned until the morrow of Saint *Martin*, the same day for the bishop. *W. Hall*. Pledges of prosecuting, *John Doe* and *Richard Roe*. Summoners *Thomas Eyre*, *John Russel*. *Edward Somner* esq; Sheriff. Which said writ of *certiorari* together with the return thereof is filed among the records without day of that term. And hereupon the aforesaid *William Phillips* by *Joseph Sherwood* his attorney immediately here in court likewise comes, and thereupon the aforesaid bishop and *John Berrow* (as before) say, that in the record and process aforesaid, and also in the giving of the judgment aforesaid, there is manifest error, alledging the errors aforesaid by them in form aforesaid above alledged, and pray that the judgment aforesaid for the errors aforesaid and others being in the record and process aforesaid may be reversed, annulled and wholly had for nothing, and that they may be restored to all things which they have lost by occasion of the judgment aforesaid; and that the court of the said lord the king now here may proceed to the examination as well of the record and process aforesaid, as of the matters aforesaid above assigned for errors; and that the aforesaid *William* may rejoin to the errors aforesaid; upon which he the said *William* saith that neither in the record and process aforesaid, nor in the giving of the judgment aforesaid, is there any error; and he likewise prays that the court of the said lord the king now here do proceed to the examination as well of the record and process aforesaid as of the matter aforesaid above assigned for error; and that the judgment aforesaid in all things may be affirmed: but because the court of the said lord the king now here are not yet advised of their judgment to be given of and upon the premises, day is thereupon given to the parties aforesaid before the lord the king until _____ where-soever, &c. of hearing their judgment thereupon, for that the court of the said lord the king now here are not yet thereof, &c.

The judgment was affirmed. See the report.

Pleas before the Lord the King at Westminster of the Term of Easter in the 12th Year of the Reign of William the Third now King of England, &c. Roll 108.

Hilliard against Cox. 1 Ld. Raym. 562.

Berkshire, **B**E it remembered that heretofore, to wit, in (to wit) the term of Saint *Michael* last past before our lord the king at *Westminster* came *Daniel Hilliard* clerk administrator of all and singular the goods and chattels, rights and credits which were of *John Cox* deceased at the time of his death, who died intestate, by *Edward Chapman* his attorney, and brought into the court of the said lord the king then there his certain bill against *Thomas Cox* in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill followeth in these words, to wit, *Berkshire*, to wit, *Daniel Hilliard* clerk, administrator of all and singular the goods and chattels, rights and credits which were of *John Cox* deceased at the time of his death, who died intestate, complains of *Thomas Cox*, being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, for that, to wit, that whereas the aforesaid *Thomas* on the first day of *March* in the 11th year of the reign of our lord *William* the third now king of *England*, &c. at *Farringdon* in the county aforesaid, was indebted to the aforesaid *John* in his life-time in one hundred shillings of lawful money of *England* for divers goods, wares and merchandizes of him the said *John* by the said *John* before that time in his life-time to the said *Thomas*, at the special instance and request of him the said *Thomas* sold and delivered; and being so indebted, the aforesaid *Thomas* in consideration thereof afterwards, to wit, the same day and year at the place abovesaid assumed upon himself, and to him the said *John* in his life-time then and there faithfully promised that he the said *Thomas* the said 100 s. to the aforesaid *John* when he should be thereunto afterwards requested would well and faithfully pay and satisfy. And also whereas afterwards, to wit, on the second day of *March* in the year abovesaid at *Farringdon* aforesaid, in consideration that the aforesaid *John* in his life-time, and at the like instance and request of him the said *Thomas* had sold and delivered to him the said *Thomas* divers

Assumpsit by an administrator for goods sold and delivered.

Quantum valent.

divers other goods, wares and merchandizes of him the said *John*, the aforesaid *Thomas* assumed upon himself, and to the said *John*. then and there faithfully promised that he the said *Thomas* would well and truly pay and satisfy to him the said *John* so much money for the goods, wares and merchandizes aforesaid last mentioned, as those goods, wares and merchandizes were reasonably worth at the time of the sale and delivery of the same, when he should be thereunto afterwards requested. And the said *Daniel* in fact saith that the goods, wares and merchandizes aforesaid last mentioned at the time of the sale and delivery of the same were reasonably worth another hundred shillings of like lawful money of *England*, to wit, at *Farringdon* aforesaid, and thereof he the said *Thomas* then and there had notice: nevertheless the said *Thomas* not at all regarding his said several promises and undertakings made in manner aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the aforesaid *John* in his life-time and the aforesaid *Daniel* after the death of him the said *John* in this behalf, hath not paid the said several sums of money to the said *John* in his life-time, or to the aforesaid *Daniel* after the death of the said *John*, (to which said *Daniel* administration of all and singular the goods and chattels, rights and credits which were of the aforesaid *John* at the time of his death after the death of him the said *John* was in due manner committed by *Joseph Woodward* doctor of laws, and archdeacon of the archdeaconry of *Berks* official lawfully constituted, to wit, on the 10th day of *April* in the year of our Lord 1699 at *Farringdon* aforesaid, to which said official the committing of the administration aforesaid in this behalf of right did belong) nor hath in any wise satisfied them or either of them for the same, although to do this the aforesaid *Thomas* after the death of him the said *John* and after the administration aforesaid in form aforesaid committed, to wit, on the 20th day of *April* in the 11th year aforesaid at *Farringdon* aforesaid was requested by the aforesaid *Daniel*, but hath altogether refused to pay or in any wise to satisfy the same to the said *John* in his life-time and to the aforesaid *Daniel*; after the death of him the said *John* and as yet refuses to pay or satisfy the same to the said *Daniel*; whereupon he the said *Daniel* saith that he is injured, and hath sustained damage to the value of 10*l.* and thereupon he brings suit, &c. And he the said *Daniel* brings here into court the letters of administration of the aforesaid *Joseph Woodward*, which testify the commission of the administration aforesaid in form aforesaid, the date whereof is on the day and year aforesaid, &c.

Breach.

Letters of administration committed.

Proof of the letters of administration.

And

And now at this day, to wit, *Wednesday* next after fifteen Imparlane.
 days of *Easter* in this same term, until which day the afore-

said *Thomas Cox* had leave to imparl to the bill aforesaid and then to answer, &c. before the lord the king at *Westminster* comes as well the said *Daniel Hilliard* by his attorney aforesaid as the said *Thomas Cox* by *Edward Searle* his attorney; and the said *Thomas Cox* defends the force and injury when, &c. and prays oyer of the letters of administration aforesaid now brought here into court and in the declaration aforesaid above specified, and they are read to him in these words, to wit, *Joseph Woodward* doctor of laws, archdeacon of the archdeaconry of *Berks* official lawfully constituted to our beloved in Christ *Daniel Hilliard* clerk, principal creditor of *John Cox* while he lived, of *Newbury* within the county and archdeaconry of *Berks* aforesaid grocer, lately deceased, greeting in the Lord: whereas the said *John Cox* (so as aforesaid) deceased lately died intestate, we therefore desiring that the goods, rights and credits of the said deceased be well and faithfully administered, and converted and disposed to be administered to pious uses, therefore for the well and faithfully disposing of the goods, rights and credits of the aforesaid deceased, and also for demanding, collecting, levying and requiring all credits whatsoever of the said deceased, and which belonged to the said deceased whilst he lived and at the time of his death, and for the payment of what the said deceased at such time of his death was indebted, as far as such goods, rights and credits to this extend, according to the value thereof, it is permitted to you, in whose fidelity we do in this behalf confide, being sworn in due form of law upon God's Holy Evangelists, well and faithfully to administer the same, and to make a full and faithful inventory of all and singular the goods, rights and credits of the said deceased, and to exhibit the same into the registry of the said archdeacon of *Berks* aforesaid on or before the first day of the month of *June* next ensuing, and also to render thereof a full and true account, calculation or estimation of and concerning your administration on or before the first day of *March* which shall be in the year of our Lord 1699. By the tenor of these presents we commit full power, and ordain, depute and constitute you by these presents administrator of all and singular the goods, rights and credits of the said deceased, (*Ann Cox* the widow and relict of the same deceased having first renounced in writing the administration of the goods, &c.) dated at *Oxford* under the seal of our office on the aforesaid 10th day of *April* in the year of our Lord 1699, which being read and heard, he the said *Thomas* saith that

Defendant
 prays oyer of the
 letters of admini-
 stration,

and pleads that
 at the time of
 the death of the
 intestate he
 (defendant) was
 an inhabitant in
 another diocese.

the aforesaid *Daniel* ought not to have or maintain his said action thereof against him, because he saith that he the aforesaid *Thomas* at the time of the death of the aforesaid *John Cox*, and at the time of the committing of the administration aforesaid, and a long time before, was an inhabitant and resident in the city of *Oxford* in the county of *Oxford*, which said city is and always hath been within the diocese of *Oxford*, and out of the archdeaconry of *Berks* aforesaid, and the jurisdiction of the archdeacon of that archdeaconry, which said archdeaconry and the whole county of *Berks* aforesaid are and always have been within the diocese of *Salisbury* and not within the diocese of *Oxford*; by which the committing of the administration of all and singular the goods and chattels, rights and credits which were of the aforesaid *John Cox* at the time of his death of right did belong to *Thomas* by divine providence then and as yet archbishop of *Canterbury*, by reason of his prerogative, and not to the aforesaid archdeacon of the archdeaconry of *Berks*, or any other inferior judge; and the aforesaid letters of administration brought here into court are void and of no value in law, and this he is ready to verify: whereupon he prays judgment if the aforesaid *Daniel* ought to have or maintain his action thereupon against him, &c.

Special demurrer.

And the aforesaid *Daniel Hilliard* saith that he by any thing by the said *Thomas Cox* above in pleading alledged ought not to be barred from having his said action thereupon against him the said *Thomas*, because he saith that the plea aforesaid by him the said *Thomas* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to bar him the said *Daniel* from having his said action thereupon against him the said *Thomas*; to which said plea in manner and form aforesaid above pleaded he the said *Daniel* hath no necessity, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient plea in this behalf, he the said *Daniel* prays judgment and his damages by occasion of the premises to be adjudged to him, &c. And for causes of this demurrer in law according to the form of the statute in such case made and provided, he the said *Daniel* demonstrates and sheweth to the court here these causes following, that is to say, for that it doth not appear by the plea aforesaid that the said *Thomas Cox* was not an inhabitant within the diocese of the bishop of *Salisbury* at the time of the death of the said *John Cox*, and that the said plea is uncertain and wants form, &c.

And

And the aforesaid *Thomas Cox* saith that the plea aforesaid by him the said *Thomas* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to bar him the said *Daniel* from having his said action thereupon against him the said *Thomas*; which said plea and the matter in the same contained, he the said *Thomas* is ready to verify and prove as the court, &c. And because the aforesaid *Daniel* doth not answer to that plea, nor hitherto in any wise denies it, he the said *Thomas* as before prays judgment, and that the aforesaid *Daniel* may be barred from having his said action thereupon against him the said *Thomas*, &c. But because the court of the said lord the king now here are not yet advised of giving their judgment of and upon the premises, day is thereupon given to the parties aforesaid before the lord the king at *Westminster* until ——— next after ——— to hear their judgment thereupon, for that the court of the said lord the king now here are not yet, &c.

Joinder in demurrer.

Curia advisare vult.

Sir *Creswell Levinz* against *Randolph*. 1 *Ld. Raym.*
594.

This was Debt upon a Bond given by a Member of Grays-Inn for the Benefit of the Society upon his Admission.

THE defendant craves oyer of the bond and condition, which was, that if the above bounden *Herbert Randolph* shall from time to time and at all times hereafter well and truly pay or cause to be paid all such sum and sums of money as shall become due by him for commons, vacations, pensions, dues and duties whatsoever belonging unto *Grays-Inn*, and shall observe all such order and orders of pensions as shall be made from time to time and at all times hereafter in *Grays-Inn* aforesaid, that then, &c. Upon which the defendant pleaded, "that he from the time of the making of the writing aforesaid until the day of exhibiting the bill aforesaid hath well and faithfully paid all sums of money, and observed all the orders in the condition aforesaid specified, mentioned and contained on his part to be paid and observed according to the form and effect of the same condition, to wit, at the parish of Saint *Andrew* aforesaid in the county aforesaid; and this he is ready to verify," &c.

And the aforesaid *Creswell* saith that he by any thing by the aforesaid *Herbert* above in pleading alledged ought not to be barred from having his action aforesaid thereof against him,

Replication.

him, because protesting that the aforesaid *Herbert* hath not paid any sums of money, nor observed any orders in the condition aforesaid specified on his part to be paid and observed according to the form and effect of the same condition, for plea the said *Creswell* saith that *Grays-Inn* aforesaid, commonly called *Grays-Inn* in the aforesaid parish of Saint *Andrew Helborn* in the county aforesaid is, and for a long time, and for a long continuance past hath been an antient inn of court, and an antient, laudable and honourable society of gentlemen studying the laws of this realm of *England*, called an inn of court, and also one of the four societies and inns of court of this realm of *England*, of and in which, or in any, or one of those four inns and societies all and singular gentlemen and persons studying the laws of *England* to be called to, professed and allowed at the bar, and for counsellors at law, are admitted, educated and approved, and for all the time aforesaid have been, and have been accustomed so to be, before they are so called to the bar, or are, have been, or could be professed and allowed counsellors at law, in which said *Grays-Inn* and society there are, and for all the time aforesaid there have been several degrees of gentlemen of that society, and amongst others, one, and a principal degree, which consists of readers and their assistants, which said readers and their assistants are, and are named benchers of *Grays-Inn* or the society, and such benchers for the time being are, and for all the time aforesaid have been governors and rulers of that society and inn, having the care (amongst other things) of examining, calling to the bar, and professing and allowing students and members of the said society for counsellors at law, one of which said benchers chosen thereunto, by and amongst themselves from time to time, is, and hath been named the treasurer of *Grays-Inn* aforesaid, and that name and office for two years together usually, or thereabouts, hath, exercises, enjoys, and occupies and uses, and hath used for all the time aforesaid to have, exercise, enjoy and occupy; which said treasurer for the time being amongst other things, as belonging to his said office, taketh and hath taken, and for all the time aforesaid hath been accustomed to take of, and from every person there called to the bar, and professed and allowed for a counsellor at law by the benchers of the said society, or *Grays-Inn*, such writing obligatory with such condition above specified, at and upon such his calling to the bar there, and every person so called to the bar, and also every person admitted into the same society (while he is one of the members thereof) hath paid and for all the time aforesaid hath been accustomed to pay to such treasurer for the time being for the use of the
said

said society a certain little sum of money, to wit, three shillings and four pence yearly in the name of his pensions, to wit, twelve pence in every term of Saint *Michael*, and twelve pence in every term of Saint *Hilary*, and one shilling and four pence for the term of *Easter* and the term of the Holy *Trinity*, towards the sustaining of the publick and necessary charges, expences and costs of the society aforesaid, to wit, at *Grays-Inn* aforesaid in the parish aforesaid; and the said *Creswell* further saith that at the time of making the writing aforesaid he himself was one of the benchers of that society and treasurer of *Grays-Inn* aforesaid, being before thereunto in due manner chosen, to wit, at that inn in the said parish; and that the aforesaid *Herbert* (then, and before being one of the gentlemen and members of the same society) then and there by the benchers of that society and inn was called to the bar, and allowed and professed a counsellor at law according to the laudable custom thereof for all the time above said there used, and thereupon he then and there made the said writing obligatory with the condition aforesaid in form aforesaid to him the said *Creswell*, and as yet is one of the members of that society there, and that on the last day of the term of the Holy *Trinity* in the 9th year of the reign of our lord *William* the third now king of *England*, &c. (one *Daniel Bedingsfield* esq; then and before, and afterward being treasurer of the society of *Grays-Inn* aforesaid) the sum of 3*s.* 4*d.* for the pensions of him the said *Herbert* belonging to the said inn for one whole year then ended was in arrear and as yet is unpaid, contrary to the form and effect of the condition aforesaid; and this he is ready to verify: whereupon he prays judgment and his debt aforesaid together with his damages by occasion of the detention of that debt to be adjudged to him, &c.

W. Dixon,
L. Agar.

To this replication the defendant demurred and shewed for cause, that by the plea aforesaid it doth not appear that he the said *Herbert* hath in any manner broken the condition of the said writing obligatory, and that it is uncertain and wants form, &c.

Geo. Barrett.

The plaintiff joined in demurrer. Judgment for the plaintiff.

Pleas

Pleas before the Lord the King at Westminster of the Term of Saint Hilary in the 13th Year of the Reign of King William the Third. Roll 460.

Ashby against White and Others. 2 Ld. Raym. 938.

Buckinghamshire, MATTHIAS Ashby complains of William White, Richard Talbot, William Bell and Richard Heydon, being in the custody of the marshal of the Marshalsea of the lord the king before the king himself, for that, to wit, That whereas on the 26th day of November in the 12th year of the reign of the lord the now king, a certain writ of the said lord the now king issued out of the court of chancery of him the said lord the now king at Westminster in the county of Middlesex; directed to the then sheriff of Buckinghamshire aforesaid, reciting that the said lord the king, by the advice and assent of his council, for certain arduous and urgent businesses concerning him the said lord the king, the state, and the defence of his realm of England, and of the church of England, had ordained his certain parliament to be holden at his city of Westminster on the sixth day of February then next coming, and there with the prelates, nobles and peers of his said kingdom to have discourse and treaty, the said lord the now king commanded the then sheriff of Buckinghamshire by the said writ firmly enjoining, that, having made proclamation in his next said county after the receipt of the same writ to be holden, of the day and place aforesaid, two knights girded with swords, the most fitting and discreet of the county aforesaid, and of every city of that county, two citizens, and of every borough two burgesses of the more discreet and most sufficient, should be freely and indifferently chosen by those, whom such proclamation should concern according to the form of the statute thereupon made and provided, and the names of the same knights, citizens and burgesses so to be chosen, to be inserted in certain indentures thereof to be made between him the then sheriff and those who should be concerned at such election

election (although such persons to be chosen should be present or absent), and should cause them to come at the said day and place, so that they the said knights, citizens and burgeses might severally have full and sufficient power for themselves and the commonalty of the county, cities and boroughs aforesaid, to do and consent to those things which should then happen to be ordained there of the common council of the said realm of him the said lord the now king (by God's assistance) upon the businesses aforesaid, so that for want of such power, or because of an improvident election of the knights, citizens and burgeses aforesaid the said businesses might not in any wise remain undone, and should certify without delay that election made in the full county of him the then sheriff distinctly and openly under his seal and the seals of those who should be concerned at that election, to the said lord the now king in his chancery at the said day and place, sending to him the said lord the king the counterpart of the indenture aforesaid sewed to the same writ together with that writ; which said writ afterwards and before the sixth day of *February* in the writ aforesaid mentioned, to wit, on the 29th day of *December* in the 12th year abovesaid at the borough of *Aylesbury* in the said county of *Bucks* was delivered to one *Robert Weedon* esq; then sheriff of the same county of *Bucks*, to be executed in form of law; by virtue of which said writ the aforesaid *Robert Weedon* being then and there sheriff of the county of *Bucks* aforesaid as before is set forth, afterwards and before the aforesaid 6th day of *February*, to wit, on the 30th day of *December* in the 12th year abovesaid at the borough of *Aylesbury* aforesaid in the said county of *Bucks* made his certain precept in writing under the seal of him the said *Robert Weedon* of his office of sheriff of the county of *Bucks* aforesaid, directed to the constables of the borough of *Aylesbury* aforesaid, reciting the day and place of the parliament aforesaid to be holden, thereby requiring them and giving to them in command, that having made proclamation within the borough aforesaid of the day and place in the same precept recited, they should cause to be freely and indifferently chosen two burgeses of that borough of the more discreet and most sufficient, by those whom such proclamation should concern according to the form of the statutes in such cases made and provided, and the names of the said burgeses so elected (although they should be present or absent) to be inserted in certain indentures between the said sheriff and those who should have interest in such election, and that he should cause them to come at the day and place

in the same precept recited, so that the said burgesſes might have full and ſufficient power for themſelves and the commonalty of the borough aforeſaid to do and conſent to thoſe things which ſhould then happen to be ordained there of the common council of the ſaid realm (by God's aſſiſtance) upon the buſineſſes aforeſaid, ſo that for want of ſuch power, or becauſe of an improvident election of the burgesſes aforeſaid the ſaid buſineſſes might not remain undone, and that they ſhould without delay certify the election to him the ſaid then ſheriff, ſending to the ſame ſheriff the counterpart of the indenture aforeſaid annexed to the ſaid precept, that he the ſaid ſheriff might certify the ſame to the ſaid lord the king in his chancery at the day and place aforeſaid; which ſaid precept afterwards and before the ſaid 6th day of *February*, to wit, on the ſame 30th day of *December* in the year aboveſaid at the borough of *Ayleſbury* aforeſaid in the ſaid county of *Bucks* was delivered to them the ſaid *William White*, *Richard Talbois*, *William Bell* and *Richard Heydon* then, and until and after the return of the ſame writ being conſtables of the borough of *Ayleſbury* aforeſaid, to be executed in form of law; to which ſaid *William White*, *Richard Talbois*, *William Bell* and *Richard Heydon*, by reaſon of their office of conſtables of the borough aforeſaid the execution of that precept of right did then and there belong: by virtue of which ſaid precept, and by force of the writ aforeſaid, they the ſaid burgesſes of the borough of *Ayleſbury*, being in that behalf duly forewarned, afterwards and before the ſixth day of *February*, to wit, on the 6th day of *January* in the 11th year aboveſaid, at the borough of *Ayleſbury* aforeſaid, before them the ſaid *William White*, *Richard Talbois*, *William Bell* and *Richard Heydon*, the conſtables aforeſaid, were aſſembled to elect two burgesſes for the borough according to the exigency of the writ and precept aforeſaid, and during that aſſembly to that intention, and before ſuch two burgesſes, by virtue of the writ and precept aforeſaid, were elected, to wit, on the day and year laſt aboveſaid at the borough of *Ayleſbury* aforeſaid in the county aforeſaid, he the ſaid *Matthias Aſhby* then and there being a burgeſs and an inhabitant of the borough aforeſaid, and not receiving alms there or any where elſe then or before, but being duly qualified and intitled to give his vote for the chooſing of two burgesſes for the borough aforeſaid according to the exigency of the writ and precept aforeſaid, before them the ſaid *William White*, *Richard Talbois*, *William Bell* and *Richard Heydon*, the four conſtables of that borough, to whom then and there it did duly belong to take and allow the vote of him the ſaid *Matthias Aſhby* of
and

and in the premisses, was ready and offered to give his vote for choosing *Thomas Lee*, bart. and *Simon Mayne* esq; two burgessees for that parliament, by virtue and according to the exigency of the writ and precept aforesaid; and the vote of him the said *Matthias* then and there of right ought to have been admitted, and the aforesaid *William White*, *Richard Talbois*, *William Bell* and *Richard Heydon*, so being then and there constables of the borough aforesaid, were then and there requested to receive and allow the vote of him the said *Matthias Ashby* in the premisses: nevertheless they the said *William White*, *Richard Talbois*, *William Bell* and *Richard Heydon*, being then and there constables of the borough aforesaid, well knowing the premisses, but contriving and fraudulently and maliciously intending to damnify him the said *Matthias Ashby* in this behalf, and wholly to hinder and disappoint him of his privilege of and in the premisses, did then and there hinder him the said *Matthias Ashby* to give his vote in that behalf, and did then and there absolutely refuse to permit him the said *Matthias Ashby* to give his vote for choosing two burgessees for that borough to the parliament aforesaid, and did not receive, nor did they allow the vote of him the said *Matthias Ashby* for that election: and two burgessees of that borough were elected for the parliament aforesaid (he the said *Matthias Ashby* being excluded as before is set forth) without any vote of him the said *Matthias Ashby*, then and there by virtue of the writ and precept aforesaid, to the enervation of the aforesaid privilege of him the said *Matthias Ashby* of and in the premisses aforesaid: whereupon the said *Matthias Ashby* saith that he is injured, and hath sustained damage to the value of 200*l.* and thereupon he brings suit, &c. Not guilty. Verdict for the plaintiff.

N. Judgment was arrested in *B. R.* by 3 judges against *Holt*. But on the 14th of *January* 1703, this judgment was reversed in the house of lords, and judgment given for the plaintiff by 50 lords against 16.

Pleas before our Lady the Queen at Westminster of the Term of the Holy Trinity in the fourth Year of the Reign of the Lady Ann, now Queen of England, &c. Roll 211.

Tenant against Gouldwin. 2 Ld. Raym. 1089.

Special action on the case for not repairing a partition wall, whereby the plaintiff was injured.

Averment of the usage for defendant to repair.

Breach.

Middlesex, **B**E it remembered that heretofore, to wit, in (to wit) **B** the term of *Easter* last past before the lady the queen at *Westminster* came *Robert Tenant* by *John Rice* his attorney, and brought into the court of the said lady the queen then there his certain bill against *Luke Gouldwin* in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, to wit, *Robert Tenant* complains of *Luke Gouldwin*, being in the custody of the marshal of the *Marshalsea* of our lady the queen before the queen herself; for that, to wit, That whereas he the said *Robert* on the first day of *October* in the first year of the reign of the lady *Ann* now queen of *England*, &c. and from thenceforth always until this time was possessed and as yet is possessed of one messuage situate, lying and being in *Frith-street* in the parish of *Saint Ann* within the liberty of *Westminster* in the county of *Middlesex*, for a certain term of years not yet ended, and used to place and keep in his cellar parcel of his messuage aforesaid, stores of coals and ale for the use of his family, and also to be sold and merchandized to divers persons who used to buy of him the commodities aforesaid in his messuage aforesaid, to the great profit and advantage of him the said *Robert*, which said cellar lies contiguously and for all the time aforesaid did lie contiguously to a messuage of the aforesaid *Luke* in the parish aforesaid, and used to be separated and fenced from a privy-house of office, parcel of the said messuage of the aforesaid *Luke*, by a thick and close wall which belongs to the said messuage of the aforesaid *Luke* and of right ought to have been repaired by the aforesaid *Luke*, for all the time aforesaid: nevertheless the aforesaid *Luke* well knowing the premises, but contriving and fraudulently intending unjustly to aggrieve him the said *Robert* in this behalf, and wholly to deprive him the said *Robert* of the use and advantage of the cellar of his messuage aforesaid, and to hinder him

him of the profit of his commerce aforesaid, on the same first day of *October* in the above said year of the reign of the said lady the queen, and from thenceforth always until this time to negligently kept and repaired the wall aforesaid (although often requested to repair the same, to wit, by him the said *Robert* on the same first day of *October* in the parish aforesaid) that for want of due care and reparation of the same wall the filthinesses and nasty things of the said privy-house of office flowed out of the said privy-house of office by the decayed parts and breaches of the wall aforesaid into the cellar aforesaid of him the said *Robert*, and overflowed the same cellar, to wit, in the parish aforesaid for the whole time aforesaid, by which he the said *Robert* lost the use of his cellar and the profit of his commerce aforesaid for all the time aforesaid; whereupon the said *Robert* saith that he is injured, and hath sustained damage to the value of 100*l.* and thereupon he brings suit, &c.

Plaintiff damaged.

The defendant let judgment go by default, and a writ of inquiry of damages was awarded, and damages assessed to 6*l.* And it was moved in arrest of judgment. See the report.

The Queen against Mackarty and Fordenborough.
2 Ld. Raym. 1179.

An Indictment against the Defendants.

FOR that they being greedy of dishonest gain, and wickedly, falsely, deceitfully and maliciously intending to defraud *Thomas Chowne* of *London* haberdasher, of divers his goods and merchandizes, (such a day, year and place) together deceitfully bargained with the aforesaid *T. C.* to barter, sell and exchange a certain quantity of pretended wine, as good and true new wine of the kingdom of *Portugal*, called *New Lisbon* wine, of him the said *A. F.* for a certain quantity of hats of him the said *T. C.* to the value of 118*l.* of good and lawful money of *England*: and upon the bartering, sale and exchange aforesaid, he the said *A. F.* took upon himself to be a merchant of *London*, and to trade and merchandize as a merchant in wines of the kingdom of *Portugal*, and then and there personated a merchant of *London*, as if he had been a true merchant of *London*, when in fact he the aforesaid *A. F.* never was a merchant of *London*, nor did trade or merchandize as a merchant in wines of the kingdom

kingdom of *Portugal*, or in any wine whatsoever as a merchant; and upon the bartering, sale and exchange aforesaid, he the aforesaid *M. M.* took upon himself to be a broker of *London*, and did then and there personate a broker of *London* as if he was a true broker of *London*, when in fact he the aforesaid *M. M.* at the time of the bartering, sale and bargaining aforesaid, or at any time afterwards was not a broker of *London*; and the aforesaid *T. C.* giving credit to the said fictitious assumptions, personatings and deceits, did then and there barter, sell and exchange to the aforesaid *A. F.* and did deliver to him the said *M. M.* as the broker between the aforesaid *T. C.* and *A. F.* for the use of him the said *A. F.* a certain quantity of hats of the value of 118*l.* for ——— hogheads of the pretended wine aforesaid: and that the aforesaid *M. M.* and *A. F.* upon the bartering, bargaining and sale aforesaid, did affirm that the aforesaid pretended wine was true new wine of the kingdom of *Portugal*, called *New Lisbon* wines, and was the wine of the aforesaid *A. F.* when in fact the aforesaid pretended wine was not wine of the kingdom of *Portugal*, nor was it drinkable or wholesome, nor was it the wine of the aforesaid *A. F.* to the great deceit and damage of him the said *T. C.* and in contempt of the said lady the now queen and of her laws, and against the peace of the said lady the now queen, her crown and dignity, &c.

Defendants were found guilty on this indictment, and after motion in arrest, the judgment was for the queen, for there is enough set out to shew the defendants were cheats *per cur'.*

Crowther against Oldfield 2 Ld. Raym. 1225.

This was a Writ of Error in the Common Pleas in an Action upon the Case wherein the Plaintiff declared in this Manner, viz,

THAT whereas he (the plaintiff) on the first day of *May*, &c. was seised, and as yet is seised of and in one messuage and ten acres of land with the appurtenances in *N.* parcel of the manor of *W.* and holden by copy of court-roll of that manor as a customary tenant of the same in fee-simple according to the custom of the same manor; and also whereas he the said plaintiff hath, and ought to have, and he and all the customary tenants of his said tenements with the appurtenances by the custom within the manor aforesaid, from time whereof the memory of man

is not to the contrary used and approved, have had, and have been accustomed to have common of pasture in a certain place, pasture or moor called *Warmlees*; parcel also of the same manor, and containing 40 acres in *Northworne*, for all his commonable cattle levant and couchant upon his customary tenements aforesaid, every year, at all times of the year at his will and pleasure, as belonging and appertaining to the same tenements with the appurtenances: nevertheless the aforesaid defendant intending to deprive the plaintiff, &c. inclosed the common, by which the plaintiff could not use and enjoy his said common in so ample and beneficial a manner as before he had used and enjoyed the same, to the plaintiff's damage, &c.

Not guilty, and a verdict for the plaintiff; and the common pleas, upon a motion in arrest of judgment gave judgment for the defendant.

But the king's bench reversed that judgment after great deliberation, the fault in the declaration being helped by the verdict.

N. It should have been laid in the declaration, "That the tenements were held at the will of the lord according to the custom of the manor," and then it would have clearly been shewn that they were copyhold.

Pleas before the Lord the King at Westminster of the Term of Saint Hilary in the 6th Year of the Reign of the Lord William the Third, now King of England, &c. Roll 309.

Lampton against Collingwood. 1 Ld. Raym. 27.

England, **T**HE lord the king hath sent to his justices (to wit) assigned to hold pleas before the king himself his writ close in these words, (to wit) *William* the third by the grace of God of *England, Scotland, France and Ireland* king, defender of the faith, &c. To our justices assigned to hold pleas before us, greeting: we have received information from the grievous complaint of *Ann Lampton* widow, administratrix of the goods and chattels which were of *Robert Lampton* esq; deceased, That whereas one *Luke Collingwood* lately, that is to say, in the term of *Easter* in the 34th

Writ of *audita querela.*

Judgment was recovered against two persons,

one of them dies, and the other survives.

Scire facias sued out against the administratrix of the deceased.

34th. year of the reign of the lord *Charles* the second late king of *England*, &c. in the court of the same late king before the said late king himself at *Westminster* in the county of *Middlesex*, by the judgment of the same court had recovered against the aforesaid *Robert Lampton* and one *Edmund Craister* esq; by the names of *Edmund Craister* of *Craister* in the county of *Northumberland* esq; otherwise called *Edmund Craister* of *Craister* in the county aforesaid esq; and of *Robert Lampton* of *Newham* in the county of *Northumberland* esq; otherwise called *Robert Lampton* of *Newham* in the county aforesaid gent. four hundred pounds of debt, and also forty shillings which to him the said *Luke* in the same court were adjudged for his damages which he sustained as well by occasion of the detention of that debt as for his costs and charges by him laid out about his suit in that behalf, whereof they were convicted, as by the record and process thereof in our court before us at *Westminster* aforesaid remaining more fully appears: and afterwards the aforesaid *Robert* in the life-time of the aforesaid *Edmund*, that is to say, on the first day of *November* in the first year of the reign of the lord *James* the second late king of *England* died, and he the said *Edmund* survived him the said *Robert*, to wit, at *Morpeth* in the county of *Northumberland*, by which, by the law of *England*, the goods and chattels which were of the aforesaid *Robert* at the time of his death, being in the hands of whatsoever administrator or administratrix of those goods and chattels to be administered, became absolutely discharged of the debt and damages aforesaid, as she the said *Ann* is ready to prove by such ways and means as are fit [convenient]; nevertheless the aforesaid *Luke* contriving and intending her the said *Ann* by pretext of the judgment aforesaid unjustly to aggrieve, and greatly to damnify, heretofore, after the death of him the said *Robert*, that is to say, in the term of the Holy *Trinity* in the fifth year of our reign and of the lady *Mary* late queen of *England*, &c. prosecuted out of the aforesaid court before us and the lady *Mary* our late queen at *Westminster* our certain writ (and of our said late queen *Mary*) of *scire facias* of and upon the judgment aforesaid against the aforesaid *Ann*, administratrix of the goods and chattels aforesaid of the aforesaid *Robert*, directed to the then sheriffs of *London*, by which said writ reciting, That whereas the aforesaid *Luke* lately in the court of the said late king *Charles* the second, before himself the said late king at *Westminster* by bill without the writ of the said late king, and by the judgment of the same court, had recovered against the aforesaid *Edmund Craister*, otherwise called *Edmund Craister* of *Craister* in the county aforesaid esq; and the

the aforesaid *Robert Lampton*, otherwise called *Robert Lampton* of *Newham* in the county aforesaid gent. the aforesaid 400*l.* of debt, and also the aforesaid 40*s.* for his damages which he sustained as well by occasion of the detention of that debt as for his costs and charges by him laid out about his suit in that behalf whereof they were then convicted, as it appeared of record; reciting also and suggesting that the aforesaid *Edmund* on the 2d day of *July* in the 4th year of the reign of the lord *James* the second late king of *England*, &c. at *London* in the parish of the blessed *Mary of the Arches* in the ward of *Cheape* died, and that the aforesaid *Robert* survived him, and that afterwards the aforesaid *Robert* on the first day of *April* in the second year of our reign and of our said late queen at *London* aforesaid in the parish and ward aforesaid died intestate, and that, after his death, administration of all and singular the goods and chattels, rights and credits which were of the aforesaid *Robert* at the time of his death was committed to the aforesaid *Ann Lampton*, (the debt and damages aforesaid not being satisfied to the aforesaid *Luke*) and that the aforesaid *Luke* had besought us and our said late queen of a fitting remedy in that behalf to be provided for him, we and our said late queen willing what was just in that behalf to be done, by the same writ commanded the said sheriffs of *London*, that by honest and lawful men of their bailiwick they should give notice to the aforesaid *Ann* that she should be before us and our said late queen at *Westminster* aforesaid on *Tuesday* next after fifteen days of the Holy *Trinity* then next following, to shew if any thing she had or knew to say for herself why the aforesaid *Luke* ought not to have his execution of the debt and damages aforesaid of the goods and chattels which were of the aforesaid *Robert* at the time of his death in the hands of her the said *Ann* to be administered, if it should seem expedient to him, and further to do and receive that which the aforesaid court before us and our said late queen should then and there consider thereof in that behalf; and that they should have then there the names of those persons by whom they should give notice to her and that writ, &c. At which day in the same court before us and our said late queen at *Westminster* came the aforesaid *Luke* in his proper person, and the sheriffs of *London* aforesaid, to wit, *Thomas Lane* knt. and *Thomas Cooke* knt, then returned to us and our aforesaid late queen upon the writ aforesaid that the aforesaid *Ann* had nothing in her bailiwick, where or by which they could give her notice, neither was the found in the same; and the said *Ann* did not come, therefore as before, by the same court it was then commanded to the same sheriffs of *London*, that by honest and lawful

The sheriffs
return *nihil*.

Alias seire facias
is awarded.

lawful men of their bailiwick they should give notice to the
aforesaid *Ann* that she should be before us and our said late
queen at *Westminster* on *Tuesday* next after three weeks of
the Holy *Trinity* then next following to shew in form afore-
said, if, &c. and further, &c. The same day was given by
the same court then before us and our said late queen to the
aforesaid *Luke* there, &c. At which day in the aforesaid
court before us and our said late queen came the aforesaid
Luke in his proper person, and the sheriffs of *London* aforesaid
as before returned that the aforesaid *Ann* had nothing in their
bailiwick, where or by which they could give notice to her,
neither was she found in the same; and the aforesaid *Ann*,
although at that day being solemnly required, did not come,
but made default; therefore it was then and there considered
by the same court before us and the aforesaid late queen that
the aforesaid *Luke* should have execution of the debt and da-
mages aforesaid of the goods and chattels which were of the
aforesaid *Robert* at the time of his death in the hands of her
the said *Ann* to be administered, as by the record and process
thereof in our court before us at *Westminster* aforesaid re-
maining more fully appears; and he the said *Luke* purposes
and threatens to sue out execution against her the said *Ann*
of the debt and damages aforesaid to be levied of the goods
and chattels aforesaid, although she the said *Ann* was never
summoned in the aforesaid plea of *scire facias*, to shew cause
why the said *Luke* ought not to have such execution against
her, neither did she appear in that plea, also although she the
said *Ann* and those goods and chattels for the cause aforesaid
ought of right to be discharged thereof, to the grievous da-
mage and hardship of her the said *Ann*, and against the law
and custom of our kingdom of *England*; whereupon she the
said *Ann* hath besought us of a fitting remedy to be provided
for her by us in this behalf: we being unwilling that the said
Ann be in any wise injured, and willing that which is just to
be done in this behalf, do command you that having heard
the complaint of the aforesaid *Ann*, and having called before
you the parties aforesaid, and others whom you shall see fit
to be called in this behalf, and having from thence heard their
reasons thereupon, you cause to be done to the parties afore-
said full and speedy justice, as of right and according to the
law and custom of our realm of *England* shall be meet to be
done. Witness ourself at *Westminster* the 23d day of *Janu-*
ary in the 6th year of our reign.

P. Lumpton.

The declaration
upon the writ.

Afterwards, to wit, on *Wednesday* next after fifteen days
of Saint *Hilary* in this same term before the lord the king
at *Westminster* cometh the aforesaid *Ann Lampton* by *Nicholas*
Harding

The sheriffs re-
turn a *2d nihil*.

Execution ad-
judged upon the
scire facias by
default,

although the
administratrix
was never sum-
moned to shew
cause, nor did
appear.

The plaintiff's
gravamen.

Audita querela.

Harding her attorney, and immediately saith that the aforesaid *Luke* ought not to have execution against her the said *Ann* of the debt and damages aforesaid to be levied of the goods and chattels which were of the aforesaid *Robert Lampton* at the time of his death in the hands of her the said *Ann*, because she saith that the aforesaid *Luke Collingwood* lately, that is to say, in the term of *Easter* in the 34th year of the reign of the said late king *Charles* the second aforesaid, in the court of the same late king before the said late king himself at *Westminster* in the county of *Middlesex* aforesaid, by the judgment of the same court had recovered against the aforesaid *Robert Lampton* and the aforesaid *Edmund Craister*, by the names of, &c. [as in the writ-part above] the aforesaid 400*l.* of debt and also 40*s.* which to him the said *Luke* in the same court were adjudged for his damages which he sustained as well by occasion of the detention of that debt, as for his costs and charges by him laid out about his suit in that behalf whereof they were convicted, as by the record and process thereof in the court of the said lord the now king before the king himself at *Westminster* aforesaid remaining more fully appears. And she the said *Ann* further saith that afterwards the aforesaid *Robert* in the life-time of the aforesaid *Edmund*, that is to say, on the first day of *November* in the first year of the reign of the said late king *James* the second aforesaid died, and he the said *Edmund* survived him the said *Robert*, to wit, at *Morpeth* aforesaid in the county of *Northumberland* aforesaid, by which by the law of *England* the goods and chattels which were of the aforesaid *Robert* at the time of his death being in the hands of whatsoever administrator or administratrix of those goods and chattels to be administered, became absolutely discharged of the debt and damages aforesaid, as she the said *Ann* is ready to prove by such ways and means as are fit [convenient]; nevertheless the aforesaid *Luke* contriving and intending her the said *Ann*, by pretext of the judgment aforesaid unjustly to aggrrieve and greatly to damnify, heretofore, after the death of him the aforesaid *Robert*, that is to say, in the term of the Holy *Trinity* in the fifth year of the reign of the lord *William* now king of *England*, &c. and of the lady *Mary* late queen of *England*, &c. prosecuted out of the aforesaid court then before the said lord the now king and the said late queen *Mary* at *Westminster* aforesaid, a writ of the said lord the now king and of the said late queen of *scire facias* of and upon the judgment aforesaid against the aforesaid *Ann* administratrix of the goods and chattels of the aforesaid *Robert*, directed to the then sheriffs of *London*, by which said writ reciting that whereas the aforesaid *Luke* lately in the court

Recovery of the judgment in the king's bench.

One of the defendants in the judgment dies.

Scire facias sued out against the administratrix of the deceased.

The sheriffs return a *ad nichil*.

Execution adjudged upon the *scire facias* by default,

although the administratrix was never summoned to shew cause, nor did appear.

The plaintiff's *gravamen*.

Audiā querela.

The declaration upon the writ.

lawful men of their bailiwick they should give notice to the aforesaid *Ann* that she should be before us and our said late queen at *Westminster* on *Tuesday* next after three weeks of the Holy *Trinity* then next following to shew in form aforesaid, if, &c. and further, &c. The same day was given by the same court then before us and our said late queen to the aforesaid *Luke* there, &c. At which day in the aforesaid court before us and our said late queen came the aforesaid *Luke* in his proper person, and the sheriffs of *London* aforesaid as before returned that the aforesaid *Ann* had nothing in their bailiwick, where or by which they could give notice to her, neither was she found in the same; and the aforesaid *Ann*, although at that day being solemnly required, did not come, but made default; therefore it was then and there considered by the same court before us and the aforesaid late queen that the aforesaid *Luke* should have execution of the debt and damages aforesaid of the goods and chattels which were of the aforesaid *Robert* at the time of his death in the hands of her the said *Ann* to be administered, as by the record and process thereof in our court before us at *Westminster* aforesaid remaining more fully appears; and he the said *Luke* purposes and threatens to sue out execution against her the said *Ann* of the debt and damages aforesaid to be levied of the goods and chattels aforesaid, although she the said *Ann* was never summoned in the aforesaid plea of *scire facias*, to shew cause why the said *Luke* ought not to have such execution against her, neither did she appear in that plea, also although she the said *Ann* and those goods and chattels for the cause aforesaid ought of right to be discharged thereof, to the grievous damage and hardship of her the said *Ann*, and against the law and custom of our kingdom of *England*; whereupon she the said *Ann* hath besought us of a fitting remedy to be provided for her by us in this behalf: we being unwilling that the said *Ann* be in any wise injured, and willing that which is just to be done in this behalf, do command you that having heard the complaint of the aforesaid *Ann*, and having called before you the parties aforesaid, and others whom you shall see fit to be called in this behalf, and having from thence heard their reasons thereupon, you cause to be done to the parties aforesaid full and speedy justice, as of right and according to the law and custom of our realm of *England* shall be meet to be done. Witness ourself at *Westminster* the 23d day of *January* in the 6th year of our reign.

P. Lumpton.

Afterwards, to wit, on *Wednesday* next after fifteen days of Saint *Hilary* in this same term before the lord the king at *Westminster* cometh the aforesaid *Ann Lampton* by *Nicholas Harding*

Harding her attorney, and immediately saith that the aforesaid *Luke* ought not to have execution against her the said *Ann* of the debt and damages aforesaid to be levied of the goods and chattels, which were of the aforesaid *Robert Lampton* at the time of his death in the hands of her the said *Ann*, because she saith that the aforesaid *Luke Collingwood* lately, that is to say, in the term of *Easter* in the 34th year of the reign of the said late king *Charles* the second aforesaid, in the court of the same late king before the said late king himself at *Westminster* in the county of *Middlesex* aforesaid, by the judgment of the same court had recovered against the aforesaid *Robert Lampton*, and the aforesaid *Edmund Craister*, by the names of, &c. [as in the writ-part above] the aforesaid 400*l.* of debt and also 40*s.* which to him the said *Luke* in the same court were adjudged for his damages which he sustained as well by occasion of the detention of that debt, as for his costs and charges by him laid out about his suit in that behalf whereof they were convicted, as by the record and process thereof in the court of the said lord the now king before the king himself at *Westminster* aforesaid remaining more fully appears. And she the said *Ann* further saith that afterwards the aforesaid *Robert* in the life-time of the aforesaid *Edmund*, that is to say, on the first day of *November* in the first year of the reign of the said late king *James* the second aforesaid died, and he the said *Edmund* survived him the said *Robert*, to wit, at *Morpeth* aforesaid in the county of *Northumberland* aforesaid, by which by the law of *England* the goods and chattels which were of the aforesaid *Robert* at the time of his death being in the hands of whatsoever administrator or administratrix of those goods and chattels to be administered, became absolutely discharged of the debt and damages aforesaid, as she the said *Ann* is ready to prove by such ways and means as are fit [convenient]; nevertheless the aforesaid *Luke* contriving and intending her the said *Ann*, by pretext of the judgment aforesaid unjustly to aggrieve and greatly to damnify, heretofore, after the death of him the aforesaid *Robert*, that is to say, in the term of the Holy Trinity in the fifth year of the reign of the lord *William* now king of *England*, &c. and of the lady *Mary* late queen of *England*, &c. prosecuted out of the aforesaid court then before the said lord the now king and the said late queen *Mary* at *Westminster* aforesaid, a writ of the said lord the now king and of the said late queen of *scire facias* of and upon the judgment aforesaid against the aforesaid *Ann* administratrix of the goods and chattels of the aforesaid *Robert*, directed to the then sheriffs of *London*, by which said writ reciting that whereas the aforesaid *Luke* lately in the court

Recovery of the judgment in the king's bench.

One of the defendants in the judgment dies.

Scire facias sued out against the administratrix of the deceased.

court of the said late king *Charles* the second before himself the said late king at *Westminster*, by bill without the writ of the said late king and by the judgment of the same court, had recovered against the aforesaid *Edmund Craister*, otherwise called *Edmund Craister* of *Craister* in the county aforesaid esq; and the aforesaid *Robert Lampton*, otherwise called *Robert Lampton* of *Newham* in the county aforesaid gent. the aforesaid 400*l.* of debt, and also the aforesaid 40*s.* for his damages which he sustained as well by occasion of the detention of that debt as for his costs and charges by him laid out about his suit in that behalf whereof they were then convicted as it appeared of record; reciting also and suggesting that the aforesaid *Edmund* on the 2d day of *July* in the 4th year of the reign of the lord *James* the second late king of *England*, &c. abovesaid at *London* aforesaid in the parish of the blessed *Mary of the Arches* in the ward of *Cheape* died, and that the aforesaid *Robert* survived him the said *Edmund*, and that afterwards on the first day of *April* in the second year of the reign of the said lord *William* the now king and of the lady *Mary* late queen of *England* abovesaid at *London* aforesaid in the parish and ward aforesaid he died intestate, and that, after his death, administration of all and singular the goods and chattels, rights and credits which were of the aforesaid *Robert* at the time of his death was committed to the aforesaid *Ann Lampton*, (the debt and damages aforesaid not being satisfied to the aforesaid *Luke*) and that the aforesaid *Luke* had besought the aforesaid lord *William* the now king and the lady *Mary* late queen of *England*, of a fitting remedy in that behalf to be provided for him, and that the said lord the now king and the said late queen willing what was just in that behalf to be done, by the same writ commanded the said sheriffs of *London*, that by honest and lawful men of their bailiwick they should give notice to the aforesaid *Ann* that she should be before the said lord the now king and the said late queen at *Westminster* aforesaid on *Tuesday* next after fifteen days of the Holy *Trinity* then next following, to shew if any thing she had or knew to say for herself why the aforesaid *Luke* ought not to have his execution of the debt and damages aforesaid of the goods and chattels which were of the aforesaid *Robert* at the time of his death in the hands of her the said *Ann* to be administered, if it should seem expedient to him, and further to do and receive that which the aforesaid court before the said lord the now king and the said late queen should then and there consider thereof in that behalf; and that they should have then there the names of those persons by whom they should give notice to her and that writ, &c. At which day in the same court

court before the said lord the now king and the said late queen at *Westminster* came the aforesaid *Luke* in his proper person, and the sheriffs of *London* aforesaid, to wit, *Thomas Lane* knt. and *Thomas Cooke* knt. then returned to the said lord the now king and to the said late queen upon that writ that the aforesaid *Ann* had nothing in their bailiwick, where or by which they could give her notice, neither was she found in the same, and that the said *Ann* did not come, therefore as before, by the same court it was then commanded to the same sheriffs of *London*, that by honest and lawful men of their bailiwick they should give notice to the aforesaid *Ann* that she should be before the said lord the now king and the said late queen at *Westminster* on *Tuesday* next after three weeks of the Holy *Trinity* then next following to shew in form aforesaid, if, &c. The same day was given by the same court then before the said lord the now king and the said late queen to the aforesaid *Luke* there, &c. At which day in the aforesaid court before the said lord the now king and the said late queen at *Westminster* came the aforesaid *Luke* in his proper person, and the sheriffs of *London* aforesaid as before returned that the aforesaid *Ann* had nothing in their bailiwick, where or by which they could give notice to her, neither was she found in the same; and the aforesaid *Ann*, although at that day being solemnly required, did not come, but made default; therefore it was then and there considered by the same court before the said lord the now king and the said late queen that the aforesaid *Luke* should have execution of the debt and damages aforesaid of the goods and chattels which were of the aforesaid *Robert* at the time of his death in the hands of her the said *Ann* to be administered, as by the record and process thereof in the court of the aforesaid lord the now king before the king himself at *Westminster* remaining more fully appears; and he the said *Luke* purposes and threatens to sue out execution against her the said *Ann* of the debt and damages aforesaid to be levied of the goods and chattels aforesaid, although she the said *Ann* was never summoned in the aforesaid plea of *scire facias*, to shew cause why the said *Luke* ought not to have such execution against her, neither did she appear in that plea, also although she the said *Ann* and those goods and chattels for the cause aforesaid ought of right to be discharged thereof, to the grievous damage and hardship of her the said *Ann*, and against the law and custom of this kingdom of *England*: and this she is ready to verify: whereupon she prays judgment, and that the aforesaid *Luke* may be barred from having every execution whatsoever of and upon the recovery aforesaid to be levied of the goods and chattels which were

The plaintiff
was never
summoned.

Grovamen.

Plaintiff prays
judgment.

of

and restitution.

*Venue awarded
to summon the
plaintiff in the
Scire facias,*

who appears
and demurs.

of the aforesaid *Robert* at the time of his death, and that she the said *Ann* may be restored to all things which she hath lost by occasion of the adjudication of execution aforesaid &c. and that the aforesaid *Luke* may come here in court to answer of and concerning the premises, &c. But because the court of the lord the king now here before the king himself doth not know whether the allegations of the aforesaid *Ann* in this behalf are true or not, therefore the sheriff of *Northumberland* is commanded that he cause the aforesaid *Luke* to come before the lord the king from the day of *Easter* in 15 days wheresoever, &c. to answer of and concerning the premises, and further to do and receive that which the court of the said lord the king now here before the king himself shall consider in this behalf. The same day is given to the aforesaid *Ann*, &c. at which day before the lord the king at *Westminster* cometh the aforesaid *Ann* by her attorney aforesaid, and the aforesaid *Luke* at the same day, being solemnly required, likewise cometh by *Henry Dodd* his attorney, and saith that the matter in the writ and declaration aforesaid contained is not sufficient in law to compel the aforesaid *Luke* to answer to the same, or to retard the having his execution of and upon the judgment aforesaid to be levied of the goods and chattels which were of the aforesaid *Robert Lampton* at the time of his death, to which he the said *Luke* hath no necessity, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient writ and declaration in this behalf, he the said *Luke* prays judgment of the said writ and declaration, and that the said writ and declaration may be quashed, &c.

Cref. Levinz.

Joinder in
demurrer.

And the aforesaid *Ann* saith that the writ and declaration aforesaid ought not to be quashed, because she saith that the said writ and declaration and the matters in them contained are good and sufficient in law to bar the aforesaid *Luke* from having his execution of and upon the judgment aforesaid against her the said *Ann* to be levied of the goods and chattels which were of the aforesaid *Robert* at the time of his death, which said writ and declaration and the matters in them contained she the said *Ann* is ready to verify and prove as the court, &c. And because the aforesaid *Luke* doth not answer to the declaration aforesaid, nor hath hitherto in any manner denied it, she the said *Ann*, as before, prays judgment, and that the aforesaid *Luke* may

may be barred from having every execution whatsoever of and upon the recovery aforesaid to be levied of the goods and chattels which were of the aforesaid *Robert* at the time of his death, &c. and that she may be restored to all things which she hath lost by occasion of the adjudication of execution aforesaid, &c. But because the court of the lord the king here is not yet advised of giving their judgment of and concerning the premisses, day thereupon is given to the parties aforesaid before the lord the king, from the day of the Holy *Trinity* in three weeks wheresoever, &c. for hearing their judgment of and concerning the premisses, for that the court of the said lord the king here thereof are not, &c. At which day before the lord the king at *Westminster* the parties aforesaid come by their attornies aforesaid, whereupon all and singular the premisses being seen and fully understood by the court of the lord the king now here, and mature deliberation being had thereupon, for that because it seems to the court of the said lord the king now here that the writ and declaration aforesaid and the matter in them contained are good and sufficient in law to bar the aforesaid *Luke* from having his execution of and upon the judgment aforesaid against the aforesaid *Ann*, to be levied of the goods and chattels which were of the aforesaid *Robert* at the time of his death, therefore it is considered that the aforesaid *Luke* is barred from having every execution whatsoever of and upon the recovery aforesaid to be levied of the goods and chattels which were of the aforesaid *Robert* at the time of his death, &c. and that she the said *Ann* is restored to all things which she hath lost by occasion of the adjudication of execution aforesaid, &c.

*Curia advisors
vult.*

Judgment for
the plaintiff,

and restitution
awarded.

Trinity Term, 9 W. 3. Roll 493.

Bellasis one, &c. against Hester. 1 Ld. Raym.
280.*Cooke.*

Attachment of
privilege for a
clerk of the
prothonotary.

First count upon
a bill of ex-
change against
the acceptor.

Surry, *JOHN Hester* was attached by the lord the (to wit) king's writ of privilege issuing out of the court here to answer to *Richard Bellasis* one of the clerks of *John Cooke* esq; chief prothonotary of the court of the lord the king of the bench here, according to the liberties and privileges of the same court for such prothonotaries, their clerks, and other ministers of the same bench, from time whereof the memory of man is not to the contrary used and approved in the same, of a plea of trespass upon the case, &c. And whereupon the said *Richard* in his proper person complains, That whereas on the first day of *May* in the year of our Lord 1697, and long before, as well the aforesaid *John Hester*, as one *William Greaveson*, were persons in the way of merchandizing, trading and using commerce within this realm of *England*, to wit, at *Southwark* in the said county of *Surry*, and the aforesaid *William* on the same day and year at *Southwark* aforesaid, according to the usage of merchants made his certain bill of exchange bearing date the same day and year, directed to the aforesaid *John Hester*, and thereby requested him the said *John Hester* in ten days after sight of the same bill of exchange to pay to the aforesaid *Richard*, by the name of *Richard Bellasis* esq; or his order, the sum of ten pounds, (the like sum received of master *William Wilkin-son*) of which said bill of exchange the aforesaid *John Hester* afterwards, to wit, on the 7th day of *May* in the year of our Lord 1697 aforesaid at *Southwark* aforesaid had notice and sight, and then and there accepted the same according to the usage and custom of merchants, and by reason thereof he the said *John Hester* became chargeable to pay to him the said *Richard* the aforesaid ten pounds in the same bill of exchange mentioned according to the tenor and effect of the same bill; and being so chargeable, the aforesaid *John Hester* afterwards, to wit, the same day and year last aforesaid at *Southwark* aforesaid, in consideration thereof assumed upon himself, and to him the said *Richard* then and there faithfully promised that

he the said *John Hester* the said ten pounds to the said *Richard*, according to the tenor and effect of the same bill, would well and faithfully pay and content. And also whereas the aforesaid *John* on the same day and year last aforesaid was indebted to the said *Richard* in other ten pounds of lawful money of *England* for monies by the aforesaid *John Hester* for the use of him the said *Richard* before that time received, and being so indebted, the aforesaid *John Hester* afterward, to wit, the same day and year at *Southwark* aforesaid, in consideration thereof assumed upon himself, and to the said *Richard* then and there faithfully promised that he the aforesaid *John Hester* the same ten pounds last mentioned to him the said *Richard* would well and faithfully pay and content: nevertheless the aforesaid *John Hester* not at all regarding his several promises and undertakings aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *Richard* in this behalf, the aforesaid several sums of money or any part thereof to him the said *Richard* (although to this requested by him the said *Richard* on the 17th day of *May* in the year of our Lord 1697 aforesaid and often afterwards at *Southwark*) hath not paid, or in any wise satisfied, but to pay the same to him hath hitherto altogether refused and as yet doth refuse, to the damage of him the said *Richard* of 20 *l.* and thereupon he brings suit, &c. Pledges of prosecuting, *John Doe* and *Richard Roe*.

Second count
upon an *assumpsit*
for money re-
ceived to the
plaintiff's use.

And the aforesaid *John* by *Thomas Wright* his attorney comes and prays *oyer* of the writ of attachment aforesaid; and it is read to him in these words, (to wit) *William* the third by the grace of God of *England, Scotland, France* and *Ireland* king, defender of the faith, &c. To the sheriff of *Surry*, greeting: attach *John Hester* so that you may have him before our justices at *Westminster* on *Friday* next after the morrow of the Holy *Trinity* to answer to *Richard Bellasis* esq; one of the clerks of *John Cooke* esq; chief prothonotary of our court of the bench; according to the liberties and privileges of the same court for such prothonotaries, their clerks and other ministers of the same bench, from time whereof the memory of man is not to the contrary, used and approved in the same, of a plea of trespass upon the case, and have you there this writ. Witness *G. Treby* at *Westminster* the 17th day of *May* in the 9th year of our reign; which being read and heard, he the said *John* prays judgment of the writ and declaration aforesaid as to the first promise in the declaration aforesaid, because he saith that it manifestly appears by that declaration that the said writ was prosecuted before the said *Richard* had any

Plea without
any defence.
Oyer of the writ.
Demands judgment of the writ and declaration as to the first promise.
As to second promise non *assumpsit*.

cause of action accrued upon that promise, and this he is ready to verify: whereupon he prays judgment of the said writ and declaration as to the said first promise, and that the said writ and declaration in that behalf may be quashed, &c. and as to the other promise aforesaid in the declaration aforesaid above-mentioned, he the said *John* saith that he did not assume upon himself in monner and form as the aforesaid *Richard* above hath declared against him, and of this he puts himself upon the country.

And the aforesaid *Richard* saith that the said plea of the aforesaid *John* above in form aforesaid pleaded in abatement of the writ and declaration of him the said *Richard* as to the first promise and undertaking aforesaid, and the matter in the same contained, are not sufficient in law to quash the said writ and declaration thereupon; and that the said plea of the aforesaid *John* above pleaded in bar as to the second promise and undertaking aforesaid, and the matter in the same contained, are not sufficient in law to bar him the said *Richard* from having his said action thereupon against him the said *John*; and that he the said *Richard* to those pleas in manner and form aforesaid pleaded hath no necessity, nor is he bound by the law of the land to answer; and this he is ready to verify: wherefore for want of sufficient pleas of him the said *John* in this behalf, he the said *Richard* prays judgment and his damages by reason of the premisses to be adjudged to him, &c.

And the aforesaid *John* as to the first promise aforesaid, since he hath above alledged sufficient matter in law to quash the writ and declaration aforesaid in that behalf, which he is ready to verify, which said matter the aforesaid *Richard* doth not deny, nor hath answered the same in any manner, but altogether refuses to admit that averment, as before prays judgment of the said writ and declaration in that behalf, and that the said writ and declaration as to the said first promise may be quashed; and as to the said second promise, since he the said *John* hath above alledged sufficient matter in law to bar him the said *Richard* from having his said action thereupon to be maintained, which he is ready to verify, which said matter the said *Richard* doth not deny, nor hath answered to the same in any manner, prays judgment, and that the said *Richard* may be barred from his said action as to the said second promise, &c. And because the justices here will advise themselves, &c.

Michaelmas Term 2 William and Mary. Roll
289.

Kemp against Andrews. Cited 1 Ld. Raym. 340.

London, **B**E it remembered, that on *Thursday* next after (to wit) **B** three weeks of Saint *Michael* in this same term before the lord the king and lady the queen at *Westminster* came *Francis Kemp* merchant, by *Edward Shaller* his attorney, and brought here into the court of the said lord the king and lady the queen then there his certain bill against *Jonathan Andrews* mariner, in custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, (to wit) *London*, (to wit) *Francis Kemp* merchant, complains of *Jonathan Andrews* mariner, being in the custody of the marshal of the *Marshalsea* of the lord the king and lady the queen, before the king and queen themselves, for that, to wit, That whereas the said *Francis* and certain other persons *Geoffry Nightingale* and *John Penning* now deceased, (whom he the said *Francis* hath survived) in the life-time of them the said *Geoffry* and *John*, to wit, on the 20th day of *November* in the year of our Lord 1686, at *London* aforesaid, to wit, in the parish of the blessed *Mary of the Arches* in the ward of *Cheape*, were possessed of the goods and chattels following, that is to say, of one ship called the *Streights Merchant* (and several other goods which are particularly specified) to the value of 20,000 *l.* of lawful money of *England*, as of the proper goods and chattels of him the said *Francis*, and of the aforesaid *Geoffry* and *John* in the life-time of them the said *Geoffry* and *John*, and being so possessed thereof, he the said *Francis* and the aforesaid *Geoffry* and *John* afterwards in the life-time of them the said *Geoffry* and *John*, to wit, the same day and year aforesaid at *London* aforesaid in the parish and ward aforesaid casually lost the goods and chattels aforesaid out of their hands and possession, which said goods and chattels afterwards, to wit, the same day and year aforesaid, at *London* aforesaid in the parish and ward aforesaid came to the hands and possession of him the said *Jonathan* by finding: nevertheless the aforesaid *Jonathan* well

Trover by a
surviving
merchaat.

knowing the goods and chattels aforesaid to be the goods and chattels of him the said *Francis*, and of the aforesaid *Geoffry* and *John*, and to them the *Francis*, *Geoffry* and *John* in the life-time of them the said *Geoffry* and *John* (whom he the said *Francis* hath survived) of right to belong and appertain, but contriving and fraudulently intending them the said *Francis*, *Geoffry* and *John*, in the life-time of them the said *Geoffry* and *John* (whom he the said *Francis* hath survived) craftily and subtilly to deceive and defraud, hath not delivered the goods and chattels aforesaid (although often requested) to the said *Francis* and to the aforesaid *Geoffry* and *John* in the life-time of the said *Geoffry* and *John*, or to any of them, or to him the said *Francis* after the death of them the said *Geoffry* and *John*, but afterwards, to wit, the same day and year aforesaid at *London* aforesaid in the parish and ward aforesaid converted and disposed of the goods and chattels aforesaid to the said *Jonathan's* own proper use and benefit, to the damage of him the said *Francis Kemp* of 30,000 *l.* and thereupon he brings suit, &c.

Defendant
pleads they were
joint merchants,
and so there
ought to be no
survivorship.

And the aforesaid *Jonathan Andrews* by *Basil Herne* his attorney comes and defends the force and injury when, &c. and saith that the aforesaid *Francis Kemp* ought not to have or maintain his action aforesaid against him, because he saith that the aforesaid *Francis Kemp* and the aforesaid *Geoffry Nightingale* and *John Penning* in the declaration aforesaid above named, long before the aforesaid several times in which the possession, loss, conversion and disposition of the goods and chattels aforesaid in the declaration aforesaid mentioned are supposed to be had and done, and also at the said several times in which, &c. were merchants, and as joint merchants, for the common profit of them the said *Francis*, *Geoffry* and *John* were possessed of the aforesaid goods and chattels in the declaration mentioned, to wit, at *London* aforesaid in the parish and ward aforesaid, and that by the law of merchants, and the law used and approved within this realm of *England*, there is not, nor ever was any right of survivorship between joint merchants. And the aforesaid *Jonathan* further saith that the aforesaid *Geoffry Nightingale* before the exhibiting of the bill aforesaid, to wit, on the 6th day of *July* now last past at *London* aforesaid in the parish and ward aforesaid made his last will and testament in writing, and then and there constituted and appointed *Ann Nightingale* and *Bridges Nightingale* executors of his same last will aforesaid; which said *Bridges Nightingale*, after the death of him the said *Geoffry Nightingale*, and before the exhibiting of the bill aforesaid, to wit, on the first day of *October* now last past, at *London* aforesaid in the parish and ward aforesaid, proved

That one deceased merchant
made a will and
an executor
who proved it,
and is living.

proved the same last will of him the said *Geoffry Nightingale* in due form of law, and took upon himself the burthen of the execution thereof, and as yet is living, and in full life. And the aforesaid *Jonathan* farther saith that the aforesaid *John Penning*, before the exhibiting of the bill aforesaid, to wit, the day, year, and at the place aforesaid made his last will and testament in writing, and then and there constituted and appointed one *Elizabeth Penning* executrix of his same last will; which said *Elizabeth* after the death of him the said *John Penning*, and before the exhibiting of the bill aforesaid, to wit, the day and year, and at the place aforesaid proved the same last will of him the said *John Penning* in due form of law, and hath taken upon herself the burthen of the execution thereof, and as yet is there living, and in full life, and this he is ready to verify; whereupon he prays judgment if the aforesaid *Francis* ought to have or maintain his action aforesaid against him, &c.

And that the other deceased merchant made a will and an executor who proved it, and is living.

*Tremaine,
W. Thompson.*

The plaintiff demurs, and shews for cause that the plea amounts to the general issue, does not answer the declaration, is uncertain, double, and wants form.

The defendant joins in demurrer.

Hilary Term in the 8th Year of King William the Third. Roll 1667.

Thorpe against Thorpe. 1 Ld. Raym. 662.

Yorkshire, RICHARD Thorpe late of *Hepton* in the county (to wit) aforesaid, gent. was attached to answer to *John Thorpe* of a plea of trespass upon the case, &c. and whereupon the said *John* by *Henry Hemmingway* his attorney complains, that whereas the aforesaid *Richard*, on the 19th day of *January* in the year of our Lord 1693, had and held of and from the aforesaid *John* two closes of customary land called *Boolefalls* with the appurtenances in *Hipperholme* in the county aforesaid by way of mortgage: and also whereas afterwards, to wit, the same day and year at the castle of *York* a certain discourse was had and moved between the aforesaid *Richard* and him the said *John*, of and concerning the mortgage aforesaid, and the releasing the equity of redemption of him the said *John* of and in the tenements aforesaid with the appurtenances, and also of and concerning certain

Case upon mutual promises upon an agreement, whereby plaintiff agreed to release his equity of redemption in two closes, in consideration of which defendant promised to pay plaintiff 7*l*.

certain sums of money which were then owing and payable by him the said *John* to the aforesaid *Richard*; and upon that discourse he the said *John* then and there agreed to make to the use of the aforesaid *Richard* and for his sole benefit, a good and sufficient release of the equity of redemption of him the said *John*, of and in the tenements aforesaid with the appurtenances, in consideration whereof the aforesaid *Richard* did then and there agree to give and pay to him the said *John* seven pounds over and besides the monies which were then due, of and upon the mortgage aforesaid, and to deliver to him the said *John* one sack of malt, and also to acquit him of and from all sums of money which he the said *John* then owed to the aforesaid *Richard*, as before is said: and he the said *Richard* afterwards, to wit, the same day and year at the castle of *York* aforesaid, in consideration of the agreement aforesaid, and also in consideration that the aforesaid *John* had then and there assumed upon himself, and had faithfully promised to the aforesaid *Richard* to perform all things in the agreement aforesaid contained on the part of him the said *John* to be performed, assumed upon himself, and to him the said *John* then and there faithfully promised that he the aforesaid *Richard* would well and truly fulfil the agreement aforesaid in all things on his part to be performed. And the said *John* in fact saith that he, after the making of the agreement aforesaid, and before the day of obtaining of the original writ of him the said *John*, to wit, on the 29th day of *July* in the year of our Lord 1694, did perform all things in that agreement contained on the part of him the said *John* to be performed, to wit, at the castle of *York* aforesaid: and although the aforesaid *Richard* in pursuance of the agreement aforesaid did give and pay to him the said *John* 25 s. parcel of the aforesaid 7 l. Nevertheless the aforesaid *Richard* not at all regarding his promise and undertaking aforesaid in form aforesaid made, as to 5 l. and 15 s. the residue of the aforesaid 7 l. but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *John* in this behalf, hath not given or paid to him the said *John* the aforesaid 5 l. and 15 s. or any part thereof, nor hath delivered to him the said *John* the aforesaid sack of malt, nor hath acquitted him the said *John* of the monies aforesaid to the aforesaid *Richard* owing, as before is said, according to the form and effect of the agreement aforesaid, (although to do this the aforesaid *Richard* afterwards, to wit, on the 10th day of *August* in the year of our Lord last aforesaid, and often afterward, at the castle of *York* aforesaid was requested by him the said *John*), but so to do hath hitherto altogether refused

General averment of performance of all things on the plaintiff's part.

refused and as yet doth refuse. And also whereas the aforesaid *Richard* afterwards, to wit, on the 29th day of *September* in the year of our Lord last aforesaid at the castle of *York* aforesaid was indebted to him the said *John* in 5*l.* and 15*s.* of lawful money of *England* for the release of the equity of redemption of him the said *John* of and in certain customary lands with the appurtenances in *Hipperholme* in the county aforesaid, by him the said *John* to the aforesaid *Richard* and to his use and benefit, at the special instance and request of him the said *Richard* before granted and made, and being thereupon so indebted, the aforesaid *Richard* afterwards, to wit, the day and year last aforesaid, at the castle of *York* aforesaid, in consideration thereof assumed upon himself, and to him the said *John* then and there faithfully promised that he the aforesaid *Richard* the aforesaid 5*l.* and 15*s.* last mentioned to him the said *John*, when he should be thereunto afterwards requested, would well and faithfully satisfy: nevertheless the aforesaid *Richard* not at all regarding his aforesaid promise and undertaking last mentioned, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *John* in this behalf, hath not yet paid, or in any wise satisfied the aforesaid 5*l.* and 15*s.* last mentioned, or any part thereof, to him the said *John*, (although to do this the aforesaid *Richard* afterwards, to wit, on the 11th day of *November* in the year of our Lord last aforesaid, and often afterwards, at the castle of *York* aforesaid hath been requested by him the said *John*) but hath hitherto altogether refused to pay the same to him, and as yet doth refuse, to the damage of him the said *John* of 20*l.* and thereupon he brings suit, &c.

Second count on an *assumpsit* for 5*l.* 15*s.* for a release of his equity of redemption.

And the aforesaid *Richard* by *Joseph Green* his attorney comes and defends the force and injury when, &c. And as to the first promise aforesaid, he the said *Richard* saith that the aforesaid *John Thorpe* ought not to have his action aforesaid thereupon against him, because he saith that after the making of that promise, to wit, on the 29th day of *July* in the year of our Lord 1694, at the castle of *York* aforesaid by a certain indenture then and there made between the aforesaid *Richard Thorpe* and one *Thomas Heald*, by the names of *Richard Thorpe* of *Hopton* in the county of *York*, gent. and *Thomas Heald* of *Hipperholme* in the said county of *York* gent. of the one part, and the aforesaid *John* by the name of *John Thorpe* late of *Sinderhills* in the township of *Hipperholme* aforesaid gent. of the other part, the counterpart whereof sealed with the seal of him the said *John*, he the said *Richard* brings here into court, bearing date the day and

Bar by the same release, by which the plaintiff released his equity of redemption, &c. as to the first count.

and year last aboveſaid, the ſaid *John* did remiſe, releaſe and for ever quit claim to the ſaid *Richard Thorpe* and *Thomas Heald*, their executors, adminiſtrators and aſſigns, all and all manner of actions, ſuits, cauſes and accounts, debts, duties, reckonings, ſum and ſums of money, and demands whatſoever, which he the ſaid *John Thorpe* ever had, or which he, his heirs, executors, adminiſtrators and aſſigns, or any of them, in time then to come could or might have to, for or againſt the ſaid *Richard Thorpe* and *Thomas Heald*, their executors, adminiſtrators or aſſigns, for or by reaſon of any matter, cauſe or thing whatſoever, as by the indenture aforeſaid it is more fully manifeſt and appeareth, and this he is ready to verify: whereupon he prays judgment if the aforeſaid *John Thorpe* ought to have his action aforeſaid thereupon againſt him, &c. And as to the ſecond promiſe aforeſaid in the declaration aforeſaid above mentioned, he the ſaid *Richard* ſaith that the aforeſaid *John Thorpe* ought not to have his action aforeſaid thereupon againſt him, becauſe he ſaith that *that* promiſe was made before the 29th day of *July* in the year of our Lord 1694 aforeſaid, to wit, on the firſt day of *July* in the ſame year, to wit, at the caſtle of *York* aforeſaid. And the ſaid *Richard* further ſaith that on the aforeſaid 29th day of *July* in the year of our Lord 1694 aforeſaid at the caſtle of *York* aforeſaid, by the aforeſaid indenture then and there made between the aforeſaid *Richard Thorpe* and the aforeſaid *Thomas Heald*, by the names of *Richard Thorpe* of *Hepton* in the county of *York* gent. and *Thomas Heald* of *Hipperholme* in the ſaid county of *York* of the one part, and the aforeſaid *John* by the name of *John Thorpe* late of *Sinderhills* in the townſhip of *Hipperholme* aforeſaid gent. of the other part, (the counterpart whereof ſealed with the ſeal of him the ſaid *John* is brought here in court as before is ſet forth, bearing date the day and year laſt aforeſaid) the ſaid *John* did remiſe, releaſe and for ever quit-claim to the ſaid *Richard Thorpe* and *Thomas Heald*, their executors, adminiſtrators and aſſigns, all and all manner of actions, ſuits, cauſes and accounts, debts, duties, reckonings, ſum and ſums of money, and demands whatſoever, which he the ſaid *John Thorpe* ever had, or which he, his heirs, executors, adminiſtrators and aſſigns, or any of them, in any time then to come could or might have to, for or againſt the ſaid *Richard Thorpe* and *Thomas Heald*, their executors, adminiſtrators or aſſigns, for or by reaſon of any matter, cauſe or thing whatſoever, as by the indenture aforeſaid more fully appears, without this, that after the making of the indenture aforeſaid he the ſaid *Richard* assumed upon himſelf, as by the ſame promiſe is above ſuppoſed,

A like plea in
bar to the 2d
count.

Traverſes that
the promiſe
was before the
releaſe.

supposed, and this he is ready to verify: whereupon he prays judgment if the aforesaid *John Thorpe* ought to have his action aforesaid thereupon against him, &c.

And the aforesaid *John* prays *oyer* of the indenture aforesaid, and it is read to him in these words, (to wit) This indenture made the 29th day of *July* in the sixth year of the reign of our sovereign lord and lady *William and Mary* by the grace of God of *England, Scotland, France and Ireland* king and queen, defenders of the faith, &c. annoq. Dom. 1694, between *Richard Thorpe* of *Hopton* in the county of *York* gent. and *Thomas Heald* of *Hipperholme* in the said county of *York* gent. of the one part, and *John Thorpe* late of *Sinderhills* in the township of *Hipperholme* aforesaid gent. of the other part: whereas the said *John Thorpe* hath formerly by certain deeds, writings and surrenders conveyed and surrendered by way of mortgage, and given up with a straw into the hands of the lord of the manor of *Wakefield*, according to the custom thereof, two closes of land, meadow and pasture with the appurtenances lying and being within the graveyard of *Hipperholme* within the said manor of *Wakefield*, called and known by the name of *Boolefalls*, now in the tenure or occupation of *J. R. and S. A.* or their assigns, being of the yearly rent to the lord of the said manor of 8*d.* and compounded for the use and behoof of *Richard Thorpe* and of his heirs and assigns for ever: and whereas likewise the said *John Thorpe* hath also formerly by certain deeds, writings and surrenders conveyed and surrendered by way of mortgage all that his capital messuage or tenement called or known by the name of *Sinderhills* with the appurtenances situate and being in *Hipperholme* aforesaid, and all houses, edifices, barns, buildings, stables, orchards, gardens, liberties, easements whatsoever to the same belonging or of right appertaining, and one croft lying on the backside of the said messuage, and all those three closes of land being in *Hipperholme* aforesaid, called or commonly known by the names of the *Field before the Door*, the *Farther Ing* and *Chapel Ing*, and all those five closes of land, meadow and pasture with the appurtenances lying and being in *N.* in the said county of *York*, called or commonly known by the several names of the *Overclose*, &c. now in the tenure or occupation of *S. A.* aforesaid or his assigns, to the use of *Thomas Heald* and his assigns for ever: now this indenture witnesseth, that the said *John Thorpe* hath released to the aforesaid *Richard Thorpe* and *Thomas Heald* and their heirs all provisos and conditions in the said deeds, writings and surrenders mentioned and contained, as in and by the said deeds, writings and surrenders, relation being thereunto had,

Replication.
Oyer of the
release.

had, more fully and at large it doth appear, and also doth now by these presents for ever acquit and release all his estate and right both in law and equity of redemption, title, claim and demand whatsoever to the said lands, messuage, and all and singular the premises and every of them, and that he the said *John Thorpe* doth by these presents remise, release and for ever quit-claim unto *Richard Thorpe* and *Thomas Heald* aforesaid, their heirs, executors, administrators and assigns, all and all manner of actions, suits, causes and accounts, debts, duties, reckonings, sum and sums of money and demands whatsoever which he the said *John Thorpe* ever had, or which his heirs, executors, administrators and assigns, or any of them, in time to come can or may have to, for or against the said *Richard Thorpe* and *Thomas Heald*, their executors, administrators or assigns, for or by reason of any matter, cause or thing whatsoever. In witness, &c. Upon which the plaintiff demurs, and the defendant joins in demurrer.

Judgment was given in the C. B. for the plaintiff, and affirmed in B. R.

Entered of Hilary Term in the 2d Year of Queen
Ann. B. R. Roll 261.

Parkins against Wilson. 2 Ld. Raym. 1256.

Middlesex, BE it remembered that heretofore, to wit, on (to wit) *Monday* next after fifteen days of Saint *Martin* in the term of Saint *Michael* last past before the lady the queen at *Westminster* came *Thomas Parkins* by *Francis Hutchinson* his attorney, and brought here into the court of the said lady the queen then there his certain bill against *Matthew Wilson*, in the custody of the marshal, &c. of a plea of debt; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, (to wit) *Middlesex*, (to wit) *Thomas Parkins* complains of *Matthew Wilson*, being in the custody of the marshal of the *Marshalsea* of the lady the queen before the queen herself, of a plea that he render to him 25 l. and 15 s. of lawful money of *England*, which he owes to him and unjustly detains, for that, to wit, that whereas the aforesaid *Thomas Parkins* heretofore, to wit, in this present term in the court of the lady the queen before the queen herself at *Westminster* (the same court being then at *Westminster* in the county of *Middlesex*) by

Debt in the
king's bench on
a recognizance
of bail.

by bill without the writ of the said lady the queen, and by judgment of the same court recovered against one *Jonathan Woollaston* gent. 25*l.* and 15*s.* for his damages which he had sustained as well by occasion of the not-performing of certain promises and undertakings to him the said *Thomas* by the aforesaid *Jonathan* lately made, as for his costs and charges by him laid out about his suit in that behalf whereof he the said *Jonathan* is convicted, as by the record thereof remaining in the court of the said lady the queen before the queen herself at *Westminster* aforesaid more fully appears: and whereas the aforesaid *Matthew Wilson* and one *B. C.* by the names of *Matthew Wilson* of the parish of *Saint Paul Covent Garden* cook, and *B. C.* of the parish of *Saint Clement Daves* gent. heretofore, to wit, in the term of *Easter* last past in the same court of the said lady the queen before the queen herself at *Westminster* personally came and became pledges and bail, and each of them became pledge and bail for the aforesaid *Jonathan*, that if it should happen he the said *Jonathan* should be convicted in the plea aforesaid, then they the said *Matthew* and *B.* granted, and each of them for himself did grant all such damages, costs and charges which should be adjudged to the aforesaid *Thomas Parkins* in that behalf, to be made of their and each of their lands and chattels, and to be levied to the use of the aforesaid *Thomas Parkins*, if it should happen that the said *Jonathan* should not pay the said damages, nor render himself to the prison of the marshal of the *Marshalsea* of the said lady the queen before the queen herself upon that occasion: and he the said *Thomas* saith that the aforesaid *Jonathan* hath not yet paid those damages to the aforesaid *Thomas*, nor hath rendered himself to the prison of the marshal of the *Marshalsea* of the said lady the queen before the queen herself on that occasion, by which an action hath accrued to him the said *Thomas* to require and have of the aforesaid *Matthew* the aforesaid 25*l.* and 15*s.* Nevertheless the aforesaid *Matthew* although often requested, &c. hath not yet paid the aforesaid 25*l.* and 15*s.* to him the said *Thomas*, but to pay the same to him hath hitherto altogether denied, and as yet doth deny, to the damage of him the said *Thomas* of 30*l.* and thereupon he brings suit, &c. with this, that he the said *Thomas* will verify that the aforesaid *Matthew Wilson* one of the pledges and bail for the aforesaid *Jonathan Wilson* above mentioned to have so become, and the aforesaid *Matthew Wilson* the now defendant, are one and the same person, and not another or different; and that the aforesaid *Thomas* in the record aforesaid mentioned, and the aforesaid *Thomas* the now plaintiff, are one and the same person, and not

Averment of
identity.

not another or different; and that the judgment aforesaid, as yet remains in its full strength, force and effect not reversed, annulled or satisfied.

N. The defendant *Wilson* pleaded in bar, that after the giving the said judgment against the said *Jonathan Woolleston*, and before the day of the exhibiting the plaintiff's bill, no *capias ad satisfaciendum* upon the said judgment against the said *Woolleston* was prosecuted and returned in the queen's bench, &c.

The plaintiff *Parkins* replied, that after the giving the said judgment against the said *Woolleston*, and before the exhibiting this bill, viz. on the 10th of *November* in the 2d year of the queen, the said plaintiff did sue out of the queen's bench a *capias ad satisfaciendum* against the said *Woolleston*, returnable on *Monday* next after eight days of *Saint Martin*, &c. At which day the sheriff returned that the said *Jonathan Woolleston* was not found in his bailiwick, as by the writ of *capias ad satisfaciendum*, and the aforesaid return of that writ in the said queen's bench at *Westminster* remaining of record more fully appears; and this, &c.

The defendant rejoined in this manner:

Rejoinder that the defendant in the principal action sued error on the judgment before the *ca. sa.* was sued out, returned and filed.

And the aforesaid *Matthew Wilson* saith that after the giving of the judgment aforesaid in the declaration aforesaid specified, and before the aforesaid writ of *capias ad satisfaciendum*, of and upon the judgment aforesaid against the aforesaid *Jonathan Wilson* was prosecuted, returned and assised in the court of the said lady the now queen before the queen herself at *Westminster* aforesaid, to wit, on the 20th day of *November* in the second year of the reign of the said lady the now queen, he the said *Jonathan* for the reversing of the judgment aforesaid prosecuted forth of the court of chancery of the said lady the queen, then being at *Westminster* aforesaid in the county of *Middlesex*, a certain writ of the said lady the queen for correcting the error in the record and process, and also in the giving of that judgment, directed to the said lady the queen's beloved and faithful *John Holt* knight, then, and as yet, chief justice of her the said lady the queen assigned to hold pleas before the queen herself; by which said writ the said lady the queen commanded the aforesaid chief justice that if judgment was thereupon given, then the record and process of the plaint aforesaid, with all things touching the same, he should cause to come before her justices of the common bench and her barons of the exchequer of

of the degree of the coif in the exchequer chamber of the said lady the queen at *Westminster* on *Saturday*, to wit, the 27th day of the then instant month of *November*, that the said justices of the common bench and barons of the exchequer having seen and examined the record and process aforesaid, might further do thereupon in that behalf that which of right and according to the form of the statute in such case made and provided should be meet to be done; by virtue of which said writ for correcting the error, he the said chief justice afterwards, to wit, on the same 27th day of *November* aforesaid transmitted the transcript of the record and process of the plaint and judgment aforesaid with all things touching them, before the aforesaid justices of the said lady the queen of the common bench and barons of the exchequer of the degree of the coif in the exchequer chamber at *Westminster* aforesaid, where the same as yet remains, and that the aforesaid writ for correcting the error in the same exchequer chamber as yet is pending undetermined, and the judgment aforesaid in the same court of the said lady the now queen before the queen herself as yet remains in its full strength not annulled, as by the record thereof in the same court of the said lady the now queen before the queen herself is more fully manifest and appears: and he the said *Matthew* further says, that after the prosecuting of the aforesaid writ for correcting the error, and before the return thereof, and also before the aforesaid writ of *capias ad satisfaciendum* of or upon the judgment aforesaid against the aforesaid *Jonathan Wilson* was prosecuted, returned and assailed in the court of the said lady the now queen before the queen herself at *Westminster* aforesaid, to wit, on the 22d day of *November* in the second year of the reign of the said lady the now queen, he the said *Matthew Wilson* and *Booth Chadderton* and *Richard Woollaston*, by the names of *Booth Chadderton* of *Stanhope-Street* in the parish of *Saint Clement Danes* in the county of *Middlesex*, gent. *Matthew Wilson* of *York-Street* in the parish of *Saint Paul Covent Garden* in the county aforesaid cook, and *Richard Woollaston* of *Wormley* in the county of *Hertford* esq; in their proper persons came into the aforesaid court of the said lady the now queen before the queen herself at *Westminster*, and according to the form of the statute for avoiding of unnecessary delays of executions thereupon made and provided, acknowledged themselves to owe and each of them acknowledged himself to owe to the aforesaid *Thomas Parkins* 51*l.* and 10*s.* of lawful money of *England*; to be paid to him the said *Thomas*, his executors or assigns, and unless they should so do, they the said *Booth*, *Matthew* and *Richard* granted, and each of them

them for himself did grant the aforesaid 51 *l.* and 10 *s.* to be made and levied of their and each of their lands and chattels to the use of the said *Thomas*; upon condition nevertheless, that if the aforesaid *Jonathan* should prosecute the aforesaid writ of error with effect, and if the judgment aforesaid should be affirmed against the aforesaid *Jonathan*, then if he the said *Jonathan* should satisfy and pay to the said *Thomas* the damages aforesaid, and also all such costs and damages as should be adjudged to the said *Thomas* by occasion of the delay of his execution upon the judgment aforesaid by pretext of the prosecuting of the said writ of error, then that recognizance should be void and of no effect, as by the record thereof in the aforesaid court of the said lady the now queen before the queen herself at *Westminster* remaining more fully appears, and this the said *Matthew* is ready to verify: whereupon as before he prays judgment, and that the aforesaid *Thomas Parkins* may be barred from having his aforesaid action thereof against the said *Matthew*, &c.

General demurrer, and joinder in demurrer.

N. This rejoinder is clearly a departure from the plea, for it is new matter, which does not agree with, or enforce the matter of the plea; for the plea is, that there was no *capias ad satisfaciendum*, and this rejoinder says that there was a *capias ad satisfaciendum* but it was superseded, and there is a difference between no *capias*, and a *capias* superseded; for the superseding does not make it null, or no *capias*, but only suspends the fruit or effect of it, and one must distinguish between the writ itself, and the effect of it.

Therefore the matter of this rejoinder ought to have been pleaded in the plea in bar.

Easter Term, 5 Ann. B. R. 2 Ld. Raym. 1262.

Turner against Beal.

Indeb. assumpsit. Declaration. UPON an *indebitatus assumpsit* for 100 *l.* for goods sold and delivered by the plaintiff to the defendant June 1, 1705, upon a *quantum meruit*, and an *in simul computasset*.

Plea as to all but 37 *l.* non assumpsit.

To the last promises, and to the whole sum of 100 *l.* in the first promise, except 37 *l.* part thereof, the defendant pleaded non assumpsit, upon which issue was joined. And as
to

to the said 37 *l.* part of the said sum of 100 *l.* in the said first promise and undertaking mentioned, he the said *Abraham* (the defendant) saith that he cannot deny but that he, before the 8th day of *November* in the year of our Lord 1703, was indebted to the aforesaid *John Turner* in the said 37 *l.* for the sheep and lambs in the said declaration mentioned, to him the said *Abraham* by the aforesaid *John Turner* before that time sold and delivered, and before the same 8th day of *November* in consideration thereof assumed upon himself and promised to pay to the said *John Turner* the said 37 *l.* and so he cannot deny but that the aforesaid *John Turner* ought to recover his damages by occasion of the non-payment of the said 37 *l.* against him the said *Abraham*: nevertheless he the said *Abraham* prays that his person, and also his wearing apparel, bedding, and the necessary tools for his trade, which do not exceed ten pounds in value, may be always discharged and free of and from every execution by the aforesaid *John* in this behalf to be had, according to the form of the statute made in the parliament of the lady the now queen holden by prorogation at *Westminster* in the county of *Middlesex* on the 9th day of *November* in the second year of her reign, intitled, an act for the discharge out of prison such insolvent debtors as shall serve or procure a person to serve in her majesty's fleet or army; because he says that he the said *Abraham* on the aforesaid 8th day of *November* in the year of our Lord 1703 in the same statute mentioned, and also before and afterward was a prisoner actually in the prison and gaol of the lady the queen of the *Marshalsea* of her the said lady the queen before the queen herself, under the custody of *Francis Southard* esq; keeper of that prison, for and concerning an action for debt at the suit of *Edmund Warnford*, (the said prison being then and as yet at *Southwark* in the county of *Surry*) and that, at the general quarter session of the peace of the said lady the queen, holden at *Guilford* in and for the same county of *Surry* on *Thursday* the 13th day of *July* in the third year of the reign of the said lady the now queen, before *John Fulham* and *John Lade* esquires and others their fellows justices of her the said lady the queen, assigned to keep the peace in the said county of *Surry*, he the said *Abraham* then being still a prisoner in form aforesaid, by the same justices of peace in that open court, by virtue and according to the form of the statute aforesaid, was in due manner released and discharged from his imprisonment aforesaid, without this, that he the said *Abraham* upon or after the aforesaid 8th day of *November* in the year of our Lord 1703 aforesaid assumed upon himself as to the said 37 *l.* in manner and form as the aforesaid *John* above thereupon supposes, and this he is ready

And as to 37 *l.* confesses the action.

But in stay of execution against his person, &c. he pleads the stat. 2 Ann. for insolvent debtors.

That he was a prisoner on and before the 8th of *November* 1703 for debt.

That at the general quarter sessions for *Surry* he was discharged out of prison.

Traverse of the time of the debt.

*Profert in curiam
of the duplicate
of the order of
the discharge.*

ready to verify: whereupon he prays judgment if the aforesaid *John Turner* ought to have any execution in this behalf to charge the person of him the said *Abraham*, or his wearing apparel, bedding, or the necessary tools aforesaid, &c. And the aforesaid *Abraham* brings here into court the duplicate of the order of that discharge signed and sealed with the hands and seals of the said two justices of the peace, which testify the premisses, the date whereof is in the said general quarter session of the peace at *Guilford* aforesaid the said 13th day of *July* in the third year aforesaid, &c.

L. Agar.

Demurrer.

And the aforesaid *John Turner* saith that he, by any thing by the aforesaid *Abraham* above in pleading alledged, ought not to be barred from having his execution for his damages to be recovered in this behalf by occasion of the non-payment of the aforesaid 37*l.* against the person of the aforesaid *Abraham*, and all his goods and chattels; because he saith, that the plea aforesaid by the aforesaid *Abraham* above pleaded and the matter therein contained are not sufficient in law to bar him the said *John* from having his execution thereof against the person of the said *Abraham*, and all his goods and chattels, to which he the said *John* hath no necessity, nor is he bound by the law of the land in any manner to answer, and this he is ready to verify: whereupon for want of a sufficient answer in this behalf, he the said *John* prays judgment and his damages by occasion of the premisses to be adjudged to him to be made and levied by execution against the person of the aforesaid *Abraham*, and all his goods and chattels, at the free will and pleasure of him the said *John*, &c.

T. Pengelly.

*Joinder in
demurrer.*

And the aforesaid *Abraham* saith that the plea aforesaid by him the said *Abraham* in manner and form aforesaid above pleaded and the matter therein contained, are good and sufficient in law to bar the aforesaid *John* from having his execution thereof against the person of him the said *Abraham*, and his wearing apparel, bedding, and the necessary tools for his trade, which do not exceed 10*l.* in value; which said plea and the matter therein contained, he the said *Abraham* is ready to verify and prove to the court, &c. And because the aforesaid *John* doth not answer to that plea, nor hath hitherto in any wise denied it, he the said *Abraham*, as before, prays judgment, and that the aforesaid *John Turner* may be barred from having every execution whatsoever
in

in this behalf to charge the person of him the said *Abraham* or his wearing apparel, bedding or tools aforesaid, &c.

Nota; The plea was held to be bad, even upon a general demurrer, because the necessary facts were not averred therein to intitle the justices of peace to a jurisdiction; for the defendant ought to have expressly and particularly shewn to the court in his plea that he petitioned, and that the person at whose suit he was detained in prison was summoned, that he insisted himself for a soldier in the queen's service, &c. as the statute has directed: and for this defect, there was judgment for the plaintiff.

Easter Term, 5 Ann. B. R.

The Queen against Baines. 2 Ld. Raym. 1265.

ANNE by the grace of God of *England, Scotland, France and Ireland* queen, defender of the faith, &c. To the conservators of our peace, and to our justices assigned to keep the peace in and for our county of *Westmorland*, and also to hear and determine divers felonies, trespasses and other misdemeanors committed in our said county, and to every of them greeting: whereas *Richard Baines* gent. was duly named and appointed clerk of the peace of the county aforesaid, by the most noble *Thomas* lord *Wharton*, late keeper of the rolls of our peace in our county of *Westmorland* aforesaid: which said *Thomas* lord *Wharton* then had full power and authority (as *custos rotulorum* of the same county) to name and appoint him the said *Richard Baines* clerk of the peace of the same county, to have and to hold the office of clerk of the peace of the county aforesaid so long as he should well demean himself: and he the said *Richard* was in due manner and rightly admitted to the aforesaid office and the exercise thereof, by virtue whereof the said *Richard* was and is justly intitled to the exercise of the office aforesaid and to take the profits thereof: nevertheless you the aforesaid justices have unjustly removed him the said *Richard* from the execution of the office aforesaid, and do refuse him to execute the said office, to the grievous damage of him the said *Richard*, as we are informed by his complaint: therefore we, willing that quick and speedy justice be done in this behalf to him the said *Richard Baines*, as it is just, command you, firmly injoining that immediately after the

Mandamus to restore Mr. *Baines* to the office of clerk of the peace of the county of *Westmorland*.

receipt of this writ, you restore him the said *Richard Baines* to the execution of the aforesaid office of clerk of the peace of the county aforesaid, and permit him to execute that office and to take the profits thereof, or that you shew cause to us to the contrary, lest complaint come to us again by your defaults; and in what manner this our command shall be executed that you make to appear to us at *Westminster* on *Saturday* next after eight days of *Saint Hilary*, then sending back to us this writ. Witness *J. Holt* knt. at *Westminster* the 24th day of *November* in the first year of our reign.

By rule of court.

To which writ the justices of peace made this following return:

The return.

We *Christopher Musgrave* knt. and bart. *Christopher Philipson* knt. &c. the keepers of the peace and justices in the writ to this schedule annexed within written, do most humbly certify to the most serene lady the now queen in the court of her the said queen before the queen herself at *Westminster*, That *Richard Baines* in the same writ named, being clerk of the peace for the county of *Westmorland* aforesaid, by pretext thereof at the general quarter session of the peace of the said lady the queen holden at *Appleby* in and for the county of *Westmorland* aforesaid on the 13th day of *April* in the first year of the reign of the said lady the queen, before the then justices of the said lady the queen assigned to keep the peace in and for that county, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the county of *Westmorland* aforesaid during all that session, and also at the general quarter session of the peace of the said lady the queen holden at *Kirkby in Kendall*, in and for the county of *Westmorland* aforesaid on the 14th day of *July* in the first year above said, before *Christopher Musgrave* knt. and bart. *Richard Sandford* bart. *Christopher Philipson* knt. *James Grabme*, *William Fleming*, *Henry Grabme*, *Edward Wilson* the elder, *Richard Bratbwaite*, *James Bird*, and *Thomas Dawes* esquires, and *John Archer* doctor in physick, then justices of the said lady the queen assigned to keep the peace in and for the same county, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, exercised and executed the aforesaid office of clerk of the peace for that county; and that afterwards and before the coming of the writ aforesaid, to wit, at the aforesaid general quarter session of the peace above last mentioned, a certain complaint and charge in writing was exhibited to the justices of peace in
that

that session complaining and accusing the said *Richard Baines* of divers ill behaviours committed in the execution of the aforesaid office of clerk of the peace for the same county, for that at the aforesaid then last quarter session of the peace he the said *Richard Baines* did force one *John Scott* of *Woodside* labourer, to pay nine shillings of lawful money of *England* more than his just fees; and also that the aforesaid *Richard Baines* on the 10th day of *April* in the first year of the reign of the said lady the now queen aforesaid did exact from one prisoner *Langborne*, and compel him to pay and expend the sum of eight shillings and six pence of the like money of *England*, for a certain process called a *subpœna*, to summon four witnesses to give evidence on the behalf of him the said prisoner in the sessions, which said process called a *subpœna* contained twelve lines and no more; and that at the same general quarter session of the peace holden the same 14th day of *July* in the first year aforesaid, upon full examination and due proof of the truth of the matters alledged against the said *Richard Baines* (as before is said) made and had openly in the same session in the presence of the aforesaid *Richard Baines* (who being by order of the same session duly summoned to answer to those matters as aforesaid laid to his charge, appeared at the same session in his proper person and defended himself by counsel learned in the law), the aforesaid *Richard Baines* was thereof convicted, therefore it was considered by the court of that general quarter session, that the aforesaid *Richard Baines* should be removed and discharged from the office of clerk of the peace of the aforesaid county of *Westmorland*; and the same *Richard Baines* thereupon before the coming of the writ aforesaid in the open and full court of that session, was removed and discharged by that court from the said office: and the aforesaid now keepers of the peace and justices in the writ aforesaid within written further certify, that the aforesaid *Richard Baines* was not named or appointed to be clerk of the peace for the county of *Westmorland* aforesaid to execute that office at any time after the aforesaid removal and discharge of him the said *Richard Baines* from his office aforesaid; and that the most noble *Thomas* earl of *Thanet* being keeper of the rolls of the peace of the lady the now queen in and for the county of *Westmorland* aforesaid in due manner assigned and constituted, to whom of right it belongs to name and appoint a clerk of the peace for the county of *Westmorland* aforesaid, after the removal and discharge of the aforesaid *Richard Baines* from the office of clerk of the peace for the county of *Westmorland* aforesaid, and before the coming of this writ, did name and appoint one

Thomas Carleton gent. to be clerk of the peace of the county aforesaid, the same *Thomas Carleton* being then a person able and sufficient, resiant in the said county of *Westmorland*, to execute the office aforesaid as long as he should well demean himself: and for this cause we the aforesaid keepers of the peace and justices as aforesaid within written cannot restore the aforesaid *Richard Baines* to the place and office of clerk of the peace for the county of *Westmorland* aforesaid, as by the aforesaid writ we are commanded.

N. See the report, which points out in what respects the order of the justices is holden to be bad, and so the return was ill.

Entered of Hilary Term, 3 Ann. B. R. Roll
169.

Dunn, who as well, &c. against Hinchdy. 2 Ld.
Raym. 1275.

An action *qui*
tam, &c. for
making and
selling buttons
of wood only.
10 W. 3. c. 2.

Buckinghamshire, GEORGE Dunn who sues as well for (to wit) our lady the now queen as for himself in this behalf complains of *Joseph Hinchdy*, being in the custody of the marshal of the *Marshalsea* of the said lady the queen before the queen herself, of a plea that he render to the said lady the queen and to him the said *George*, who sues as well, &c. twenty-four pounds which he oweth to the said lady the queen and to the said *George*, who sues as well, &c. and unjustly detains, for that, to wit, That whereas the aforesaid *Joseph* after the 10th day of *February* in the year of our Lord 1698, to wit, on the 6th day of *June* in the 3d year of the reign of the said lady the now queen within this kingdom of *England*, to wit, at *Stony Stratford* in the county of *Bucks* aforesaid, did cause to be made and did sell twelve dozens of buttons of wood only and turned, in imitation of other buttons, contrary to the form of the statute in such case thereupon lately made and provided by which he the said *Joseph* according to the form of the statute in such case thereupon made and provided, hath forfeited to the said lady the queen and to him the said *George*, who sues as well, &c. forty shillings for every dozen thereof, in the whole amounting to the aforesaid 24*l.* and thereupon an action hath accrued to the said lady the queen and to him the said *George*, who sues as well, &c. to require and have of the aforesaid *Joseph* the said 24*l.* Nevertheless the aforesaid *Joseph* although often requested, hath not yet paid the aforesaid

said 24^{*l*}. or any part thereof, to the said lady the queen and him the said *George*, who sues as well, &c. or to either of them, but to pay the same to the said lady the queen or to the said *George*, who sues as well, &c. hath hitherto wholly denied, and yet doth deny; whereupon he the said *George*, who sues as well for the said lady the queen as for himself in this behalf says that he is injured, and hath sustained damage to the value of thirty pounds, and thereupon he brings suit, &c.

N. B. Some of these declarations conclude thus: and thereupon he brings suit as well for the said lady the queen as for himself, &c. But this is understood, and precedents are both ways. *Trin. 13 Ann. Walter v. Laughton B. R.* so resolved that either way is good.

Trinity, 8 Ann. B. R.

Smith *against* Bowen. 2 Ld. Raym. 1289.

BOWEN was tried and convicted at the Old Bailey of the murder of *William Smith*; *Geoage Smith* (an infant of 6 years old) the brother and heir of *William S.* brought an appeal in proper person, at the same sessions *Bowen* was arraigned thereupon: the appeal being removed into the queen's bench, the court upon inspection of the appellant saw he was an infant, and therefore the appeal being brought by him in proper person was erroneous; therefore they abated the appeal *ex officio*, and gave the appellant leave to file a new bill of appeal by *Guardian*, whereupon *Bowen* was arraigned *instantly*: and thereupon the following entry perused and approved by Lord C. J. *Holt* was drawn up and entered on the roll of the first appeal, as of the first day of the term.

An appeal abated by the court, *ex officio*, because the appellant being under age brought it in person.

And now at this day, to wit, *Wednesday* next after fifteen days of *Easter* in this same term before the lady the queen at *Westminster* cometh *John Bowen*, in the custody of the sheriff of *Middlesex*, being brought into court here by virtue of a writ of the said lady the queen of *habeas corpus* directed to the same sheriff of *Middlesex*, and he is instantly committed to the custody of the marshal of the *Marshalsea* of the said lady the queen there to remain, &c. And the aforesaid *George Smith* the brother and heir of the aforesaid *William Smith* likewise cometh here in court in his proper person,

person, and thereupon, because by the inspection of the body of the said *George Smith* by the court of the said lady the queen here, it manifestly appears to the same court of the said queen here that the aforesaid *George Smith* at the time of the exhibiting of the aforesaid bill of appeal against the aforesaid *John Bowen* as before is set forth, was, and now is within the age of twenty and one years; and because the aforesaid *George Smith* (so being within the age of twenty and one years) hath prosecuted the aforesaid bill of appeal in his proper person, and not by his guardian or keeper, or next friend, against the aforesaid *John Bowen*, therefore it is considered by the court of the said lady the queen now here, that the aforesaid bill of appeal by the aforesaid *George Smith* so as aforesaid exhibited in his proper person be abated, &c. and that the aforesaid *George Smith* take nothing by his bill aforesaid, and that the aforesaid *John Bowen* go thereupon without day, &c.

Trinity Term in the 11th Year of King George.

The King against John Ward Esq. 2 Ld. Raym.
1461.

*The Attorney General, by the Order of the House of Lords,
filed the following Information against the Defendant.*

An information
by the attorney
general for
forgery.

Middlesex, **B**E it remembered that *Philip Yorke* kn. at-
(to wit) torney general of the lord the king, who
prosecutes for the said lord the king in this behalf, in his
proper person cometh here in the court of the said lord the
king before the king himself at *Westminster* on *Wednesday*
next after three weeks of the Holy *Trinity* in this same term,
and for the said lord the king gives the court here to under-
stand and be informed, that *John Ward* of *Hackney* in the
county of *Middlesex* esq; being obliged to deliver three
hundred and fifteen tons and one half of a ton of allum
of the value of five thousand pounds to the most noble
Edmund duke of the county of *Buckingham* and of *Normandy*
at a certain day now past, he the said *John Ward* wickedly
contriving and intending to deceive and defraud the afore-
said duke of the aforesaid allum, and with an iniquitous
and fraudulent intention to avoid the delivery of the same
allum, on the first day of *February* in the 11th year of the
reign

reign of the lord George by the grace of God of Great Britain, France and Ireland king, defender of the faith, &c. at Westminster in the county of Middlesex with force and arms, &c. upon the backside of a certain certificate in writing signed with the hand of one Ambrose Newton, did falsely forge and counterfeit and cause to be forged and counterfeited a certain writing in the words and figures following, that is to say,

" Schedule {	Tons. C.	Mr. John Ward I do hereby order you to charge the quantity of six hundred and sixty tons and one quarter of allum to my account, part of the quantity here mentioned in this certificate, and out of the money arising by the sale of allum in your hand pay to Mr. W. Ward and yourself ten pounds for every ton according to agreement; and for so doing this shall be your discharge. Buckingham. April 30, 1706."
	660 : 5	
	315 : 5	
	<hr/>	
	975 : 10	

and out of the money arising by the sale of allum in your hand pay to Mr. W. Ward and yourself ten pounds for every ton according to agreement; and for so doing this shall be your discharge. Buckingham. April 30, 1706." To the evil example of all others delinquents in such case, to the grievous damage of the aforesaid duke, and against the peace of the said lord the now king, his crown and dignity. And the said attorney general of the lord the king, for the said lord the king further gives the court here to understand and be informed that the aforesaid John Ward being obliged to deliver three hundred and fifteen tons and one quarter of a ton of allum of the value of five thousand pounds to the aforesaid duke at a certain day now past, he the said John Ward wickedly contriving and intending to deceive and defraud the aforesaid duke of the aforesaid allum, and with an iniquitous and fraudulent intention to avoid the delivery of the same allum, afterwards, to wit, on the said first day of February in the abovesaid 11th year of the reign of the said lord the now king at Westminster in the county of Middlesex with force and arms, &c. a certain writing falsely forged and counterfeited on the backside of a certain certificate in writing signed with the hand of one Ambrose Newton, did wickedly, unlawfully and fraudulently publish and cause to be published, which said writing falsely forged and published followeth in these words and figures following, that is to say, [and then it is set out again] he the said John Ward then and there well knowing the said writing, by him the said John Ward as aforesaid published, to be false and counterfeited, to the great damage of the aforesaid duke, and against the peace of the said lord the now king, his crown and dignity, &c.

Entered

Entered of Mich. Term, 1 Geo. 2. N. 2.

The King *against* Sir Edmund Elwell, Joseph Billers Esq; and Daniel Monty Esq; 2 Ld. Raym. 1514.

A conviction of a forcible detainer upon view of 3 justices of peace,

which was removed by *Certiorari*,

and the bodies of defendants brought up by *hab. corpus*.

Kent, **B**E it remembered that on the 15th day of *September* in the first year of the reign of our lord *George* the second by the grace of God of *Great Britain, France and Ireland* king, defender of the faith, &c. at *Beckenham* in the county of *Kent*, *Elizabeth Elwell* complains to us *E. B. P. B.* and *W. P.* three of the justices of the said lord the king assigned to keep the peace in and for the said county of *Kent*, and also to hear and determine divers felonies, trespasses and other misdemeanors committed in the said county, That *Edmund Elwell* late of *London*, bart. *J. B.* and *D. M.* did enter into the messuage of her the said *Elizabeth Elwell*, and being the mansion-house of her the said *Elizabeth Elwell* called *Langley-House*, situate within the parish of *Beckenham* aforesaid, and her the said *E. E.* out of her messuage aforesaid whereof she the said *E. E.* at the time of the entry aforesaid was seised as of the freehold of her the said *E. E.* for the term of her life, unlawfully ejected, expelled, amoved, and that messuage from her the said *Elizabeth* unlawfully with a strong hand, and an armed power, as yet hold and detain, contrary to the form of the statute in such case made and provided; whereupon she the said *E. E.* then, to wit, the same 11th day of *September* at the parish of *B.* aforesaid prays of us, being so justices as aforesaid, a sitting remedy to be applied to her in this behalf according to the form of the statute, &c. which said complaint and petition being heard by us the aforesaid justices, we the aforesaid *E. B.* bart. *P. B.* and *W. P.* the aforesaid justices, personally went to the messuage aforesaid, and then and there found and saw the aforesaid *E. E.* *J. B.* and *D. M.* detaining the aforesaid messuage with force and arms, unlawfully with a strong hand and an armed power, contrary to the form of the statute in such case made and provided; as she the said *Elizabeth Elwell* (as before is set forth) complains to us: therefore it is considered by us the aforesaid justices that the aforesaid *Edmund Elwell*, *Joseph Billers* and *Daniel Monty* are convicted, and each of them is convicted of the forcible detainer aforesaid upon our own

own view then and there as aforesaid had, according to the form of the statute aforesaid; upon which we the aforesaid justices caused the aforesaid *E. E. J. B.* and *D. M.* then and there to be arrested: and they the said *E. E. J. B.* and *D. M.* being convicted, and each of them being convicted upon our own view of the forcible detainer aforesaid (as before is set forth) are committed, and each of them is committed by us the aforesaid justices to the gaol of the said lord the king of the county aforesaid at *Maidstone* in the county aforesaid, being the next gaol to the aforesaid messuage, there to remain until they shall make fine, and each of them shall make fine to the said lord the king for their respective offences aforesaid, of which said premisses abovesaid we have caused to be made this record. In witness whereof we the aforesaid *E. B. bart. P. B.* and *W. P.* esquires, the justices aforesaid, have set our hands and seals to this record at the parish of *Beckenham* aforesaid in the county of *Kent* aforesaid the said 15th day of *September* in the first year of the reign of the said lord the now king abovesaid.

E. Bettenson,
P. Burrell,
W. Passenger.

N. This conviction was held naught, and quashed, because the defendants were committed to lie in prison until they should pay their fine, and no fine was set, therefore see the report.



T H E T A B L E.

Abatement.

P LEA, that the defendant was a gentleman and not an esquire.	Page 16
Replication, protesting that the matter in the plea is insufficient, and that in an action by bill an addition is immaterial, yet for replication plaintiff says defendant is an esquire, and concludes to the country.	16, 17
Demurrer, and joinder in demurrer.	17
Plea, that the plaintiff is a knight.	30
Plea, that another action is depending for the same debt.	53
Plea, that another action is pending for the same cause.	57
Plea in abatement of the writ of <i>quod permittat</i> .	183
Plea in abatement to the first count upon a bill of exchange.	337
An appeal abated by the court <i>ex officio</i> , because the appellant (being under age) brought it in person.	357

Action upon the Case.

Declaration for a false return of a <i>Mandamus</i> directed to the defendant to deliver to the plaintiff the charters, books, records, muniments and ensigns of magistracy of a borough, the plaintiff being duly elected mayor thereof.	1
Plea in bar, that the plaintiff was not mayor of the borough, and for that reason defendant ought not to deliver them to the plaintiff.	5
Demurrer, and joinder in demurrer.	6
Declaration upon a special promise to pay for the lodgings, &c. of two children brought by plaintiffs as administrators.	8
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3d Count	

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3d Count of the like nature.	Page 10
4th Upon an account stated with the intestate in his lifetime.	<i>ibid.</i>
Plea, the statute of limitations.	11
Replication, that the action accrued to the plaintiff within six years.	12
Declaration in an action upon the case for a captain against a colonel of a regiment for pay.	14
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The like upon a special promise to pay plaintiff a sum of money, or to render the body of <i>S. B.</i> to prison; a 2d count upon a note given upon the like occasion.	65-67
The like against a common carrier upon the custom of the realm.	79
The like for disturbing the plaintiff in the use of his way.	85
Defendant pleads in bar, a justification for a way through the way in the declaration.	86
Plaintiff replies and confesses the way of the defendant, but says that the defendant went beyond the close, to which he prescribed to have a way.	87
The defendant rejoins, but alleges no new matter, but relies on the matter before pleaded.	88
Declaration upon a bill of exchange against the acceptor thereof, on the custom of merchants; and <i>assumpsit</i> for money laid out, the like for money lent, the like for money received to the plaintiff's use.—Breach assigned of the first promise, and of the other three promises.—Imparlance.—The general issue pleaded to the 2d, 3d and 4th counts.—Plea, as to the first count, (protesting that Lord C. was not a merchant, and that plaintiff was not a merchant) That the bill of exchange was given for money lost at <i>hazard</i> by Lord C. to the plaintiff.—Special demurrer and joinder.	93-98
Declaration upon an undertaking to take up casks of brandy in one cellar, and lay them down in another. Breach assigned, that the defendant so negligently managed the said casks of brandy that for want of good care one of them was staved, and a great quantity of the brandy was spilled and lost.—Another count to the like effect.	163
General issue, verdict, and final judgment,	165
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The like in an action upon the case upon <i>Assumpsit</i> by an administrator against an executor.	219
Plea <i>non assumpsit infra sex annos</i> .	221
Replication, that the plaintiff's intestate sued out an original writ within six years after the cause of action accrued in trespass against the defendant's testator, with an intention to declare against him for the cause of action in the present declaration; that the said testator did not appear to the said writ but died, whereupon the plaintiff's said intestate sued out another original writ of trespass with the like intention as before against the now defendant; that the defendant did not appear to the said writ, and the plaintiff's intestate died, whereupon the plaintiff as administrator sued out an original writ against the now defendant in case, to which he has appeared, and thereupon the plaintiff has declared against him as above, and concludes with several averments.	221, 223
Declaration for negligently keeping fire, by which a messuage of the plaintiff demised to the defendant was burnt.	236
General issue not guilty.	237
Declaration upon a parol agreement to deliver six bags of hops before such a day, setting forth mutual promises to perform the agreement. Breach assigned. A second count upon another agreement to the like effect in writing, setting forth a discounte touching the same mutual promises, and breach assigned.—Plea in bar a submission to an award.	245, 248
Declaration (upon the custom of the realm) for negligently keeping a fire in the defendant's close, whereby the plaintiff's heath and furze were burnt. Plea not guilty, <i>Venire, Nisi prius, Postea</i> , and final judgment for the plaintiff.	250, 252
Declaration for a nuisance, in building a wall which stopped the light and air from entering into the plaintiff's workhouse thro' the window thereof, whereby the plaintiff lost the profits of his workhouse.	260
Plea in bar that the plaintiff hath recovered in another action for the very same nuisance.	261
Demurrer and joinder in demurrer.	263
Judgment for the defendant.	<i>Ibid.</i>
Declaration for maliciously and falsely procuring a man to be indicted for a riot.	265
Plea not guilty, issue joined, <i>postea, Tales</i> .	267
<i>Curia advisare vult</i> , final judgment.	268
Declaration against an husband and wife upon a promise of marriage by her while sole.	<i>Ibid.</i> A 2d

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A 2d count for money laid out for, and lent to the wife while sole.	Page 269
The general issue pleaded, and issue joined, <i>Postea</i> , verdict for the plaintiff, judgment final, error in the Exchequer Chamber, errors assigned, judgment affirmed, costs for delay awarded, and the record sent back to the king's bench, satisfaction acknowledged.	270, 273
Declaration for stopping up an highway, whereby the customers of the plaintiff could not come to his collieries for coals, &c.	291
Declaration in case against the owners of a ferry, for not keeping a ferry-boat there in repair.	293
Plea in bar, that the defendants have built a bridge at the place where the ferry was, and keep it in repair.	296
Replication that the defendant was not permitted to pass over the bridge.	Ibid.
Demurrer to the replication, and joinder.	297
Judgment for the defendant.	Ibid.
Declaration in case for arresting the plaintiff and holding him to special bail upon mesne process where no bail was required by law. The general issue not guilty.	298, 299
The like declaration better drawn.	299
By an administrator upon an <i>assumpsit</i> for goods sold and delivered.	313
The defendant prays <i>oyer</i> of the letters of administration, and pleads that at the time of the death of the intestate he (the defendant) was an inhabitant in another diocese.	315, 316
Special demurrer, and joinder in demurrer.	316, 317
Special action upon the case against the returning officers for refusing to permit the plaintiff to give his vote at an election of members to serve in parliament.	320
Special action on the case for not repairing a partition-wall, whereby a cellar of the plaintiff contiguous thereunto was damaged by the filth of a privy-house of office of the defendant.	324
The like for a commoner for inclosing part of the common, whereby plaintiff could not enjoy his common in so beneficial a manner as he had before done.	326
Declaration upon an inland bill of exchange against the acceptor, 2d count upon an <i>assumpsit</i> for money received to the plaintiff's use.	336, 337
Plea, <i>without defence</i> , craves <i>oyer</i> of the writ of attachment of privilege, and demands judgment of the writ and declaration as to the first count, and as to the 2d count <i>non assumpsit</i> .	337
Special demurrer to both the pleas and joinder in demurrer.	338
Declaration	

The T A B L E.

Declaration upon mutual promises upon an agreement, whereby plaintiff agreed to release his equity of redemption in two closes, in consideration whereof defendant promised to pay plaintiff 7*l*.—2d count upon an *assumpsit* for 5*l*. 15*s*. for a release of the equity of redemption.

Page 341, 343

Plea that the plaintiff is barred by the same release of his equity of redemption as to the first count.—And a like plea as to the 2d count, and traverses that the promise was before the release.

343, 344

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